

JAMS

ORANGE COUNTY CALIFORNIA

CENTURY PRODUCTS, LLC, a
California limited liability company,

Claimant,

vs

Ref No. 1220033832

CENTURY-BOARD USA, LLC, a New
York limited liability company,
EGOMAT NEVADA, INC., a Nevada
Corporation, and WADE BROWN, an
individual,

Respondents

AND RELATED COUNTER ACTIONS

DEPOSITION OF FYODOR SHUTOV, PH.D.

Irvine, California

Wednesday, December 28, 2005

VOLUME 2

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York limited liability company;
ECOMAT NEVADA, INC., a Nevada
corporation; and WADE BROWN, an
individual;

Respondents.

AND RELATED COUNTER-ACTIONS.

Deposition of FYODOR SHUTOV, PH.D., taken on behalf
of Respondents/Counter-Claimant, at 2 Park Plaza,
Suite 450, Irvine, California, beginning at 9:51 a.m. and
ending at 1:34 p.m. on Wednesday, December 28, 2005,
before Veronica Vera, Certified Shorthand Reporter,
No. 11887.

1 **APPEARANCES:**

2
3 **For Respondent and Counter-Claimant Century-Board USA,**
4 **LLC and Respondents Ecomat Nevada, Inc. and Wade Brown:**

5 **JULANDER, BROWN & BOLLARD**

6 **BY: DIRK O. JULANDER**

7 **Attorney at Law**

8 **2 Park Plaza, Suite 450**

9 **Irvine, CA 92614**

10 **(949) 477-2100**

11 **For Claimant and Counter-Respondent Century Products, LLC**
12 **and Counter-Respondents John Taylor and Fyodor Shutov,**
13 **Ph.D.:**

14 **TREMBLAY & SCHLUEDERBERG**

15 **BY: DONALD P. TREMBLAY**

16 **Attorney at Law**

17 **450 "B" Street, Suite 2000**

18 **San Diego, California 92101**

19 **(619) 325-2560**

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WITNESS

EXAMINATION

FYODOR SHUTOV, PH.D.

By MR. JULANDER

240

EXHIBITS

NUMBER

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12	Correspondence dated 7/2/04 from John Taylor to Wade Brown; 2 pages	309
13	Work sheet; 2 pages	332
14	Composite Material Including Rigid Foam with Inorganic Fillers; 16 pages	340

WITNESS INSTRUCTED NOT TO ANSWER

Page Line

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352	22

1 Irvine, California, Wednesday, December 28, 2005

2 9:51 a.m. - 1:34 p.m.

3
4 FYODOR SHUTOV, PH.D.,
5 having been administered an oath, was examined and
6 testified as follows:
7

8 EXAMINATION

9 BY MR. JULANDER:

10 Q Dr. Shutov, again, welcome. We appreciate you
11 taking more time to be here today to conclude your
12 deposition. That's my goal. Just wanted to make sure of
13 a couple things.

14 First of all, I'm not going to go over the rules
15 that we went over the last time relating to putting this
16 on the transcript. You remember the rules generally,
17 don't talk over each other, you know, make sure that she
18 has a chance to take everybody's testimony and answers
19 down; okay?

20 A Yes, sir. Could you speak little bit louder?

21 Q Certainly.

22 A Thank you.

23 Q If you can't hear me or if you don't understand
24 any of my questions, please let me know. Otherwise,
25 we'll assume that you've understood my question. That's

1 fair enough?

2 A Uh-huh, yes.

3 Q And one other last question, prefatory. Is
4 there any reason why you can't give your best testimony
5 again today? Are you under the influence of any drug,
6 alcohol, medication that would impair your ability to
7 recollect, testify truthfully?

8 A Today?

9 Q Yes.

10 A No, sir.

11 Q Since we last met at your deposition,
12 Dr. Shutov, have you examined any documents or done
13 anything to prepare for your further testimony today?

14 A Yes.

15 Q What have you done?

16 A Mr. Robinson sent me the transcript.

17 Q Okay, of your last deposition testimony?

18 A Yes.

19 Q Have you -- did you review that transcript?

20 A Yes.

21 Q Did you make any changes to the transcript?

22 A Very cosmetic.

23 Q Nothing substantive?

24 A No.

25 Q You don't -- as you sit here today, you don't

1 have any testimony that you had given at your prior
2 testimony that you would like to correct or change in any
3 substantive way?

4 A Please rephrase.

5 Q Sure. In other words --

6 MR. TREMBLAY: I think he corrected some words'
7 spelling. So if you drop that out of it, I think you
8 won't confuse him.

9 BY MR. JULANDER:

10 Q Dr. Shutov, as you sit here today, is there any
11 of your prior testimony that you recall that you would
12 like to change in any substantive way?

13 A No, sir.

14 Q Now, you are currently employed by Century
15 Products; correct?

16 A Yes.

17 Q Full-time employee?

18 A Full-time, yes.

19 Q And in fact, you've been a full-time employee at
20 Century Products since February of 2004; correct?

21 A Yes.

22 Q And have you been a full-time employee with
23 Century Products during the entire time from
24 February 2004 to today?

25 A Yes.

1 Q Are you aware of any prospective changes in your
2 employment with Century Products?

3 A What do you mean?

4 Q Well, for example, you're not intending to leave
5 anytime soon from Century Products, are you?

6 A Intending to leave?

7 Q Yeah, their employment, to stop being an
8 employee of Century Products.

9 A Please rephrase.

10 Q Sure. You're currently employed by Century
11 Products.

12 A Yes.

13 Q And do you have any intention to change that
14 relationship with Century Products?

15 MR. TREMBLAY: You mean is he going to quit?

16 MR. JULANDER: Yeah.

17 BY MR. JULANDER:

18 Q Are you going to quit, or do you have any
19 intention of going on to another job?

20 A Not really, not really.

21 Q What do you mean by that?

22 A I mean that it seems I have a contract for three
23 years with Century Products. So it seems after three
24 years, they will think to work with me, or I will think
25 to work with, because it is written three years contract.

1 MR. TREMBLAY: He's asking, do you have any
2 current plans to leave employment today?

3 THE WITNESS: Today, no.

4 MR. TREMBLAY: Or in the near future?

5 THE WITNESS: Actually, not.

6 MR. TREMBLAY: Okay. That's your answer.

7 BY MR. JULANDER:

8 Q And are you aware of any current plans by
9 Century Products to let go, to terminate your employment
10 relationship?

11 A I don't know.

12 Q You're not aware of any?

13 A I am not aware.

14 Q Okay. Dr. Shutov, would you please give me a
15 general understanding of what you do on a day-to-day
16 basis for Century Products?

17 A Want you to know my typical day or want you to
18 know my typical duties or obligations?

19 Q Well, let's talk about your duties or
20 obligations. What is entailed in your work for Century
21 Products?

22 A My main duty, according to my contract is to
23 develop commercially available product with the highest
24 properties with the lowest price according to the
25 technical requirements of the market. That is my main

1 duty, in order to make it.

2 Is it enough, or I have to explain you more?

3 Q Well, then, maybe let's -- let me understand,
4 then, what you do on a typical day-to-day basis.

5 A Normally, in order to reach the goal which I
6 described to you right now, I have to work in
7 different -- different aspects of the activity of the
8 company, formulations, type of chemicals, ratio between,
9 then order of mixing, then processing parameters of the
10 extruder, and processing parameters of the forming units,
11 then to develop and to test the properties locally
12 in-house such as domestic tests, you know -- how to
13 say -- fast, preliminary tests.

14 And in order to do it, my main job, I would say,
15 to think a lot and to use all my experience and to read
16 many technical literature, current literature to know
17 what is going on around. So I think my main job, in
18 other words, to generate realistic ideas, approaches, and
19 instructions to our technicians; then to test my ideas,
20 to test the material, you know, in terms of properties.
21 If I'm wrong, to change. If I'm not wrong, to optimize.
22 We discussed that other day. So that is -- it's very
23 creative job.

24 Q Did there come a point in time when Century
25 Products, through your work and efforts, had developed

1 a -- an optimized formulation that met the specifications
2 for commercial sale of its products?

3 MR. TREMBLAY: Vague and ambiguous.

4 THE WITNESS: Please rephrase. It seems I
5 understand the general sense, but I would like to know
6 exactly what you are going to ask me.

7 BY MR. JULANDER:

8 Q Well, I appreciate that. Did there come a point
9 in time when, through your efforts at Century Products,
10 you had created a formulation that produced plastic
11 lumber that had the mechanical properties that were
12 needed in order to make commercial sales of products?

13 MR. TREMBLAY: Vague and ambiguous.

14 I don't understand the word "mechanical
15 properties."

16 BY MR. JULANDER:

17 Q Do you understand "mechanical properties"?

18 A Yes, I do.

19 Q Okay. If you can answer the question.

20 A Yes. It seems now we are at the point, as you
21 said, where the mechanical properties -- I mean strengths
22 and impact -- are good enough for commercial application.
23 We have to improve some other mechanical properties such
24 as, for example, scratch resistance. But it's much more
25 aesthetic property, you understand me?

1 MR. TREMBLAY: Aesthetic?

2 THE WITNESS: Yeah, beauty, rather than
3 question, is it possible to apply or not? That is my
4 answer.

5 BY MR. JULANDER:

6 Q When did that time come? When did you reach
7 that point?

8 MR. TREMBLAY: Misstates the testimony. I think
9 his testimony is that they have not yet gotten to that
10 point. So it's vague and ambiguous as to what --

11 MR. JULANDER: Let me withdraw that, and I'll
12 ask you a different question.

13 MR. TREMBLAY: Thank you.

14 BY MR. JULANDER:

15 Q Dr. Shutov, you indicated that you had reached
16 the point where the mechanical properties of the plastic
17 wood are now able to be sold in the commercial markets;
18 correct?

19 A Able or will be able?

20 Q Well, okay. Maybe I misunderstood. I
21 understand that there are still some aesthetic properties
22 that you're working on with respect to the plastic
23 lumber; right?

24 A Yes.

25 Q Do I also understand that Century Products is

1 today, in the current time frame, now selling plastic
2 lumber on a commercial basis?

3 A I think so.

4 Q And that's because you believe you've developed
5 a product that has the mechanical properties that you
6 need in order to support -- in order to be allowed to be
7 sold commercially; right?

8 A Yes.

9 Q When did that first happen?

10 A You're asking me when the company sold very
11 first commercial product?

12 Q Well, not exactly. That could be a component to
13 what I'm asking for, but I'm asking for when the
14 formulation that was able to be sold commercially was
15 developed. When did that happen?

16 A I know exactly when it happened.

17 Q When was that?

18 A It was March of 2004 when I prepared the very
19 first patent disclosure.

20 Q March of 2004?

21 A Yes, or April, maybe.

22 Q So you started working in February?

23 A Yes.

24 Q And you believe that by March or April you had
25 developed a formulation that could be sold commercially?

1 A Yes.

2 MR. TREMBLAY: You mean formulation that could
3 develop product that could be sold commercially?

4 MR. JULANDER: Yes.

5 BY MR. JULANDER:

6 Q Is that how you understood my question?

7 A Yeah.

8 You're right.

9 MR. TREMBLAY: Okay. You're not selling the
10 formulation?

11 MR. JULANDER: That's true.

12 THE WITNESS: Okay. I did understand. Because
13 you're right. It's not just formulation, but the
14 process, how to use formulation, how to process to
15 produce the product. You are right.

16 BY MR. JULANDER:

17 Q So your testimony is that by March or April, you
18 had developed a formulation that would produce plastic
19 lumber that could be sold commercially; is that correct?

20 A Yes, sir.

21 Q And then what work did you do on that
22 formulation from March or April to today?

23 A Let us say in March when I applied -- I suppose
24 it was March, the very first patent disclosure. I -- how
25 to stay -- crossed over the threshold between the

1 previously -- all products before my time didn't have
2 enough characteristic to compete on the market. I
3 started work as a consultant, and then I make very
4 rigorous research and attempts. And in March, I crossed
5 the threshold between noncommercial and commercial
6 product. You understand me?

7 Q So that was about one or two months after you
8 started working at Century Products?

9 A Yes, sir. And after that, still today, I have
10 the same job. The job is permanent job and forever two
11 avenues which are interrelated -- to improve the
12 properties and to decrease the price using different
13 approach. But it's not your question.

14 Q Do I understand from your testimony that you
15 prepared a patent application in March or April of 2004?

16 A It wasn't a patent application. The very first
17 stage of any patent, to prepare one page which they call
18 as a patent disclosure. And it was sent to our patent
19 lawyer, and the process started.

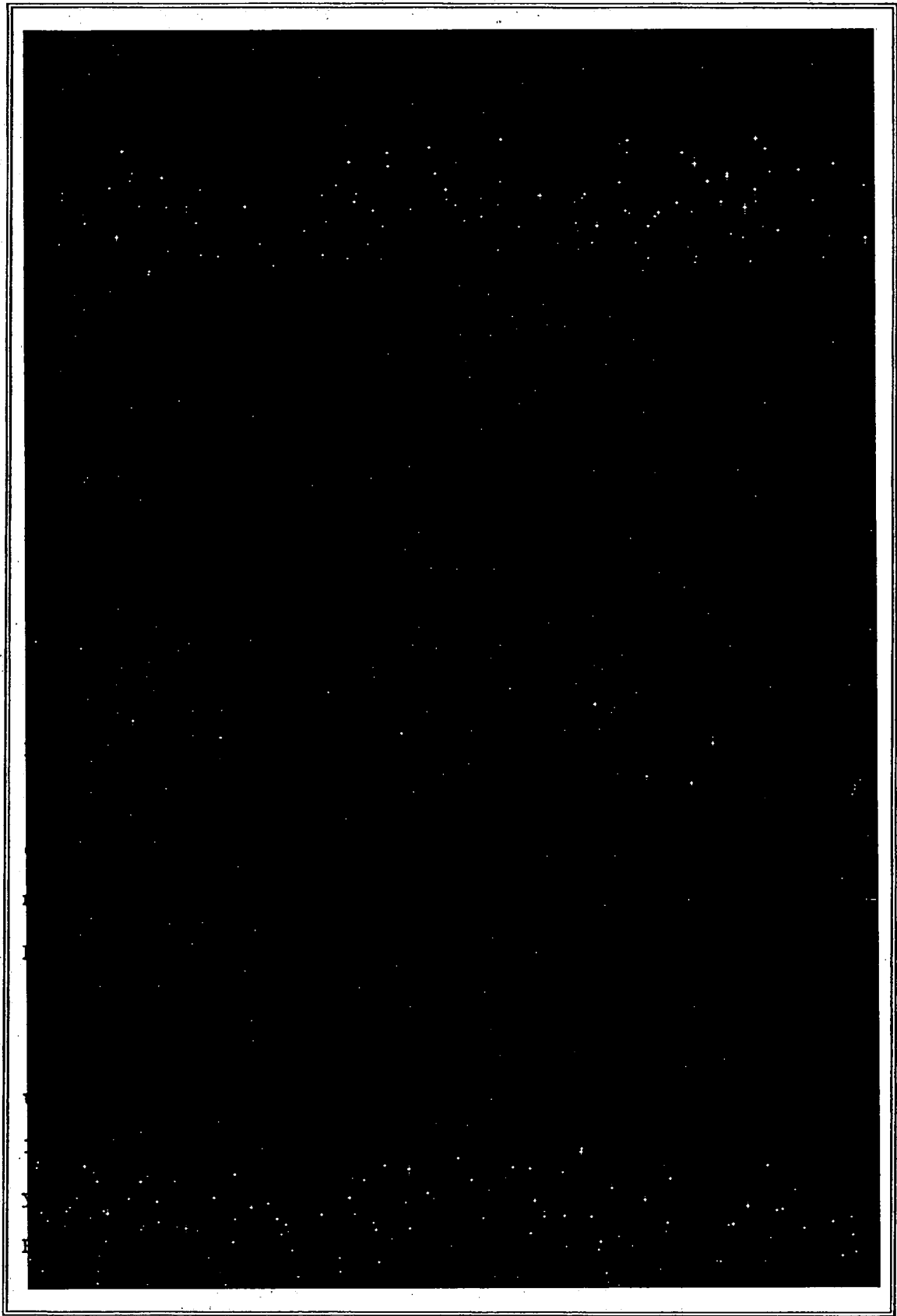
20 Q In March or April, what did you -- in 2004, what
21 did you understand was the invention that you were
22 seeking to patent?

23 A There's several, let us say, developments. You
24 can't call it one invention. You can tell there are
25 several inventions which I have put together.

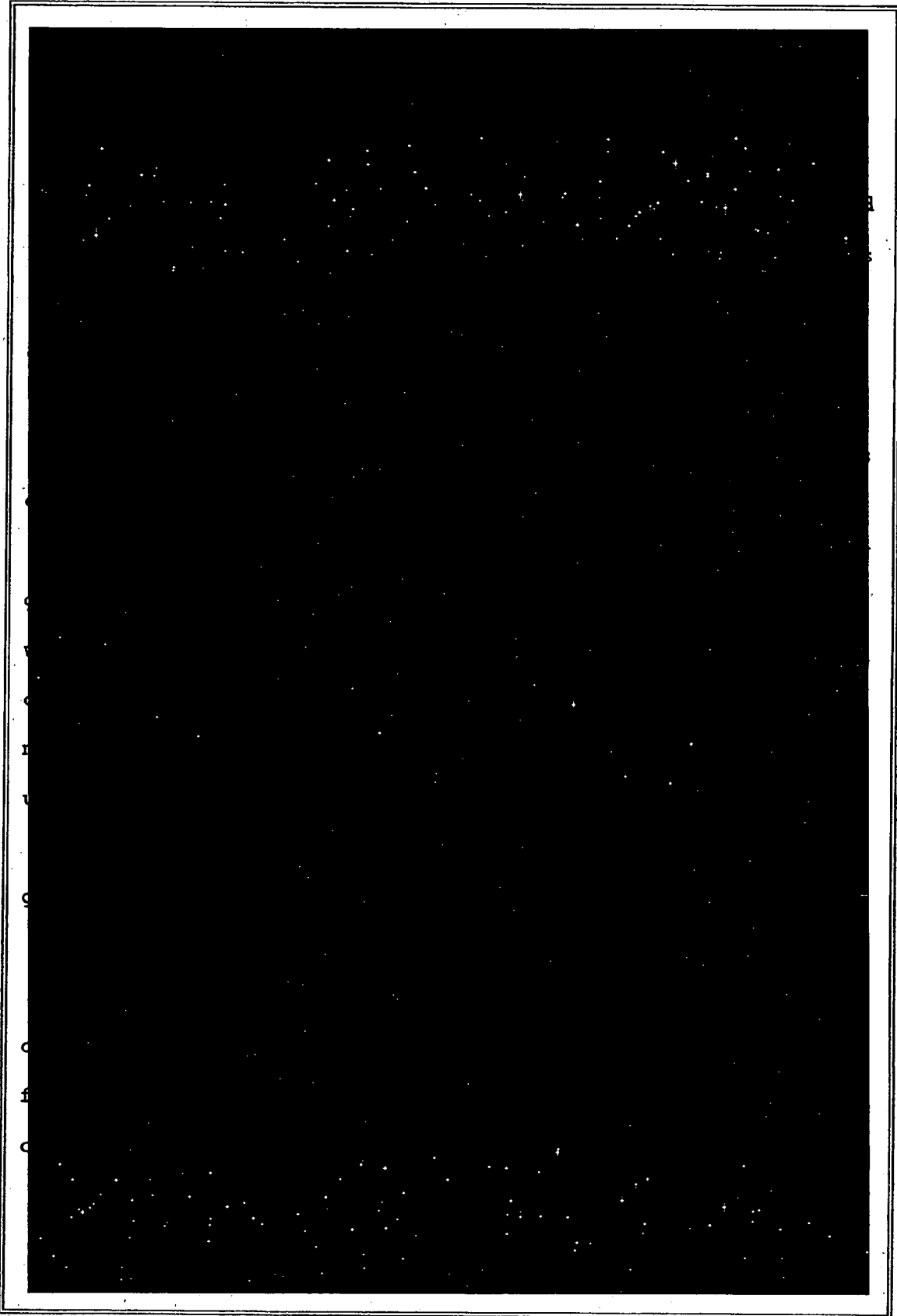
1 First, to replace one polyol -- flexible polyol
2 which my predecessor used for a couple years to the new
3 one based on very general chemistry. Because, as I said,
4 the main chemical characteristic of previous polyol which
5 Wade Brown worked had very low reactivity or hydroxyl
6 number. And even by phone, I never seen the process. I
7 said, "Repeat it. Immediately change the one flexible
8 polyol for the more reactive." So I found the new type
9 of polyol with much higher reactivity and recommended to
10 change. Then immediately, the properties were better --
11 became better, according to Wade reported me and
12 John Taylor reported me.



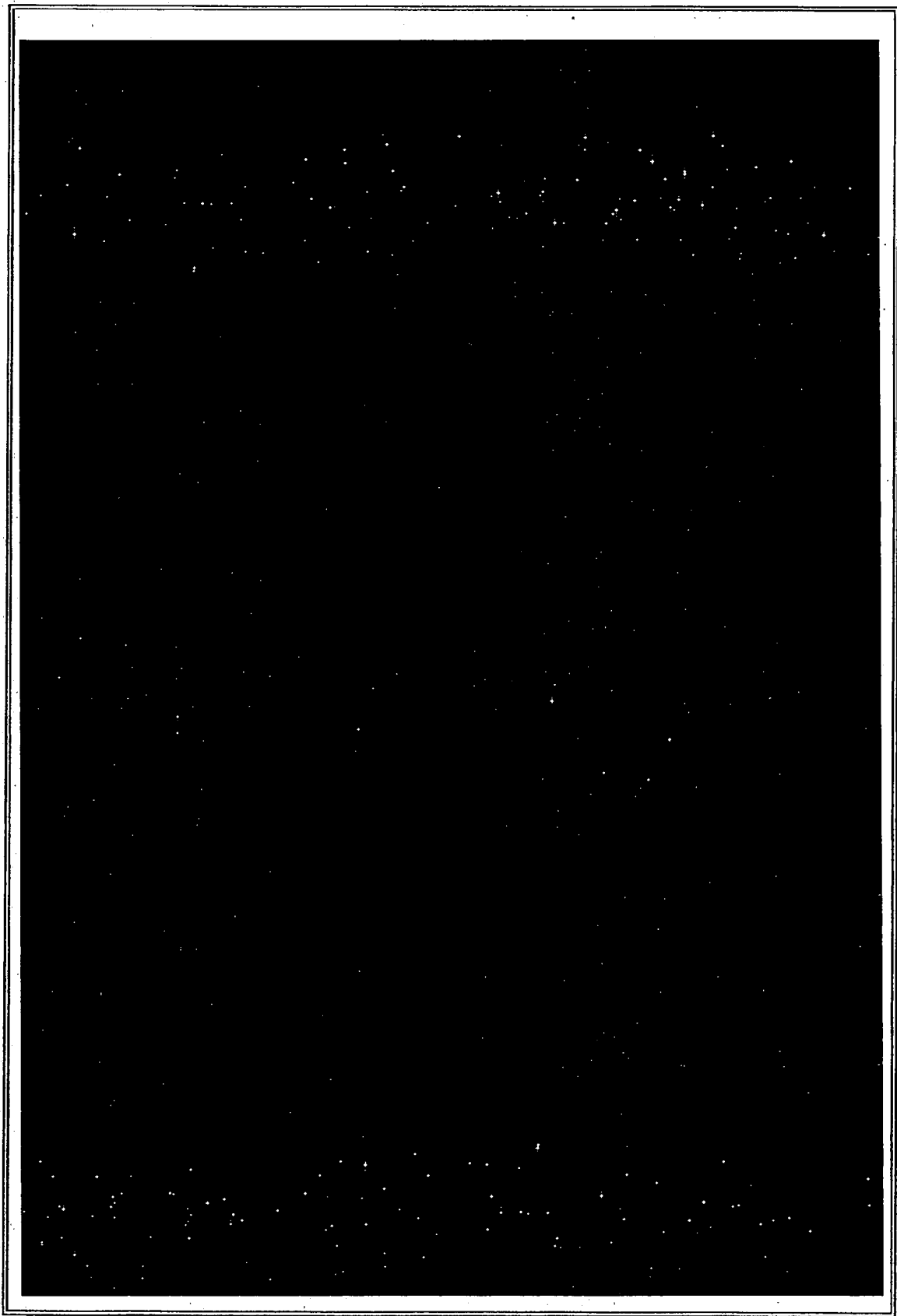
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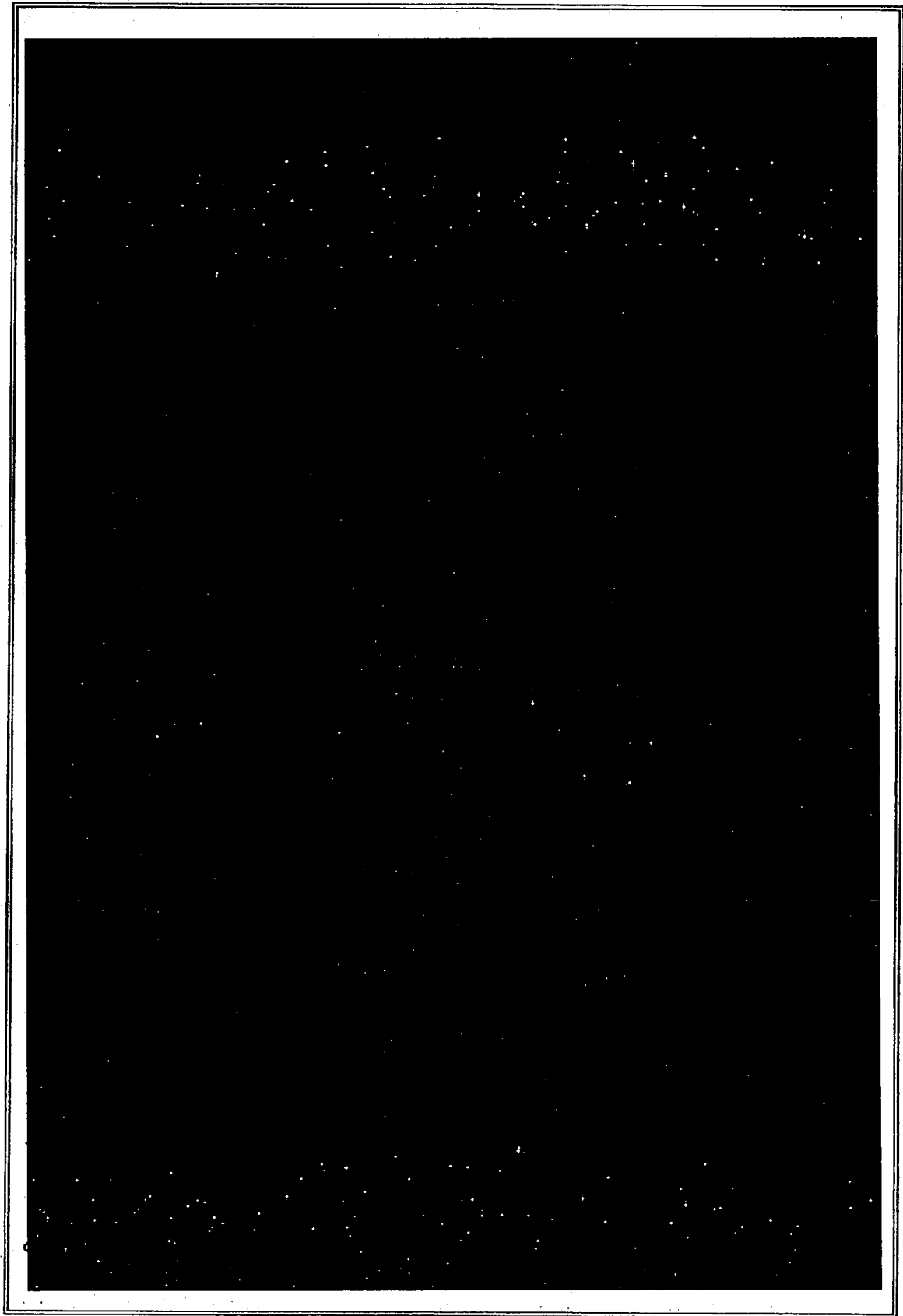
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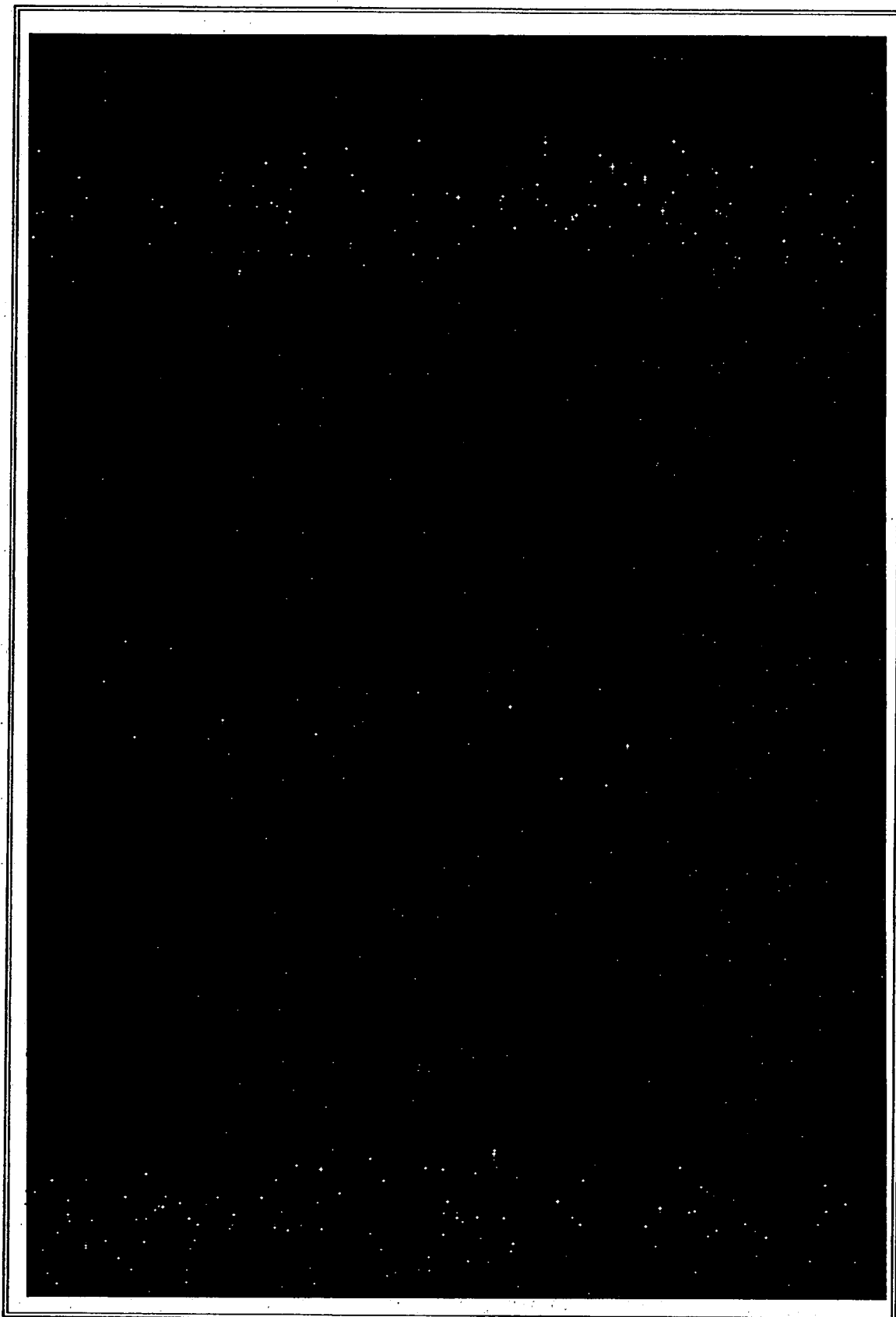
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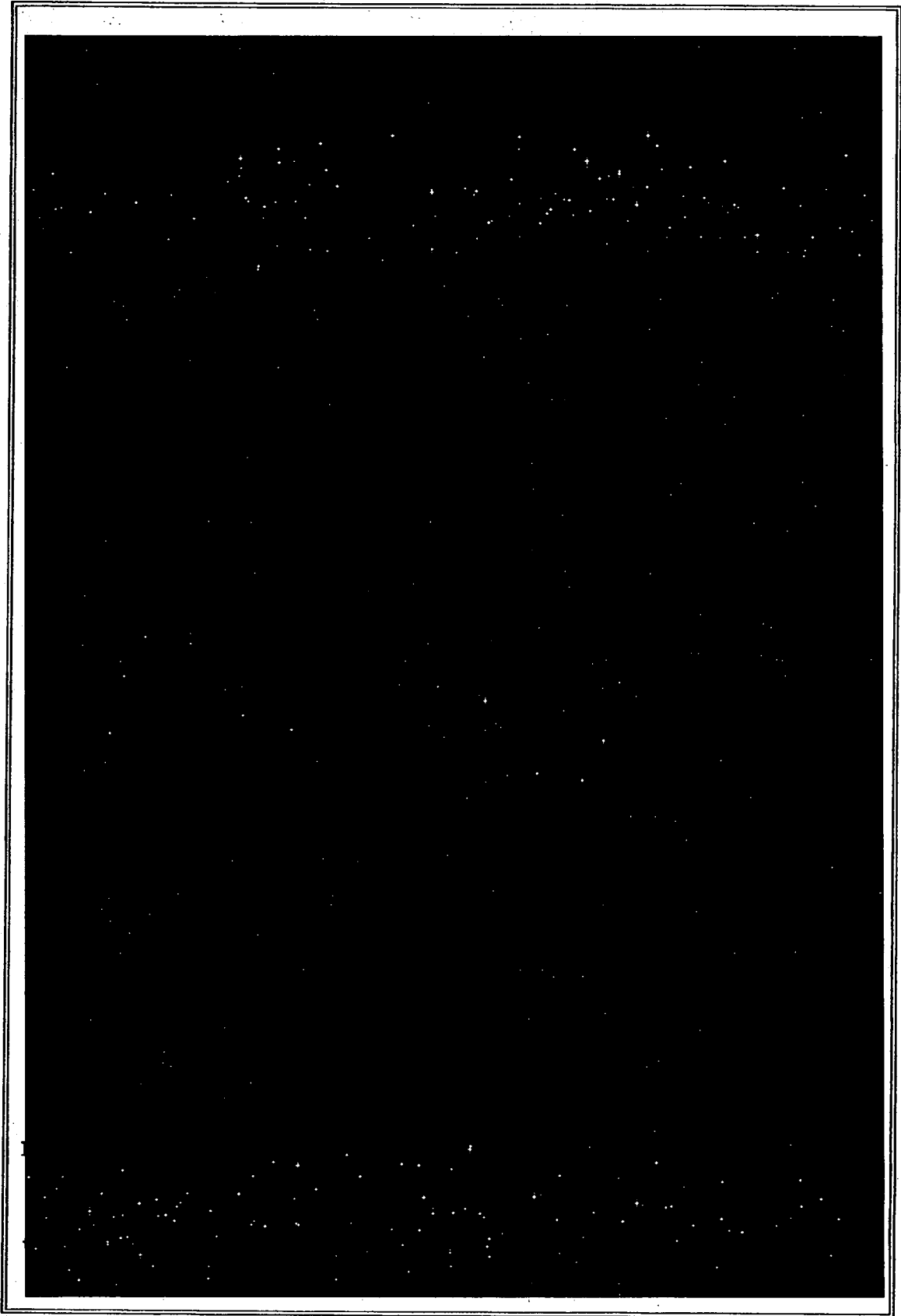
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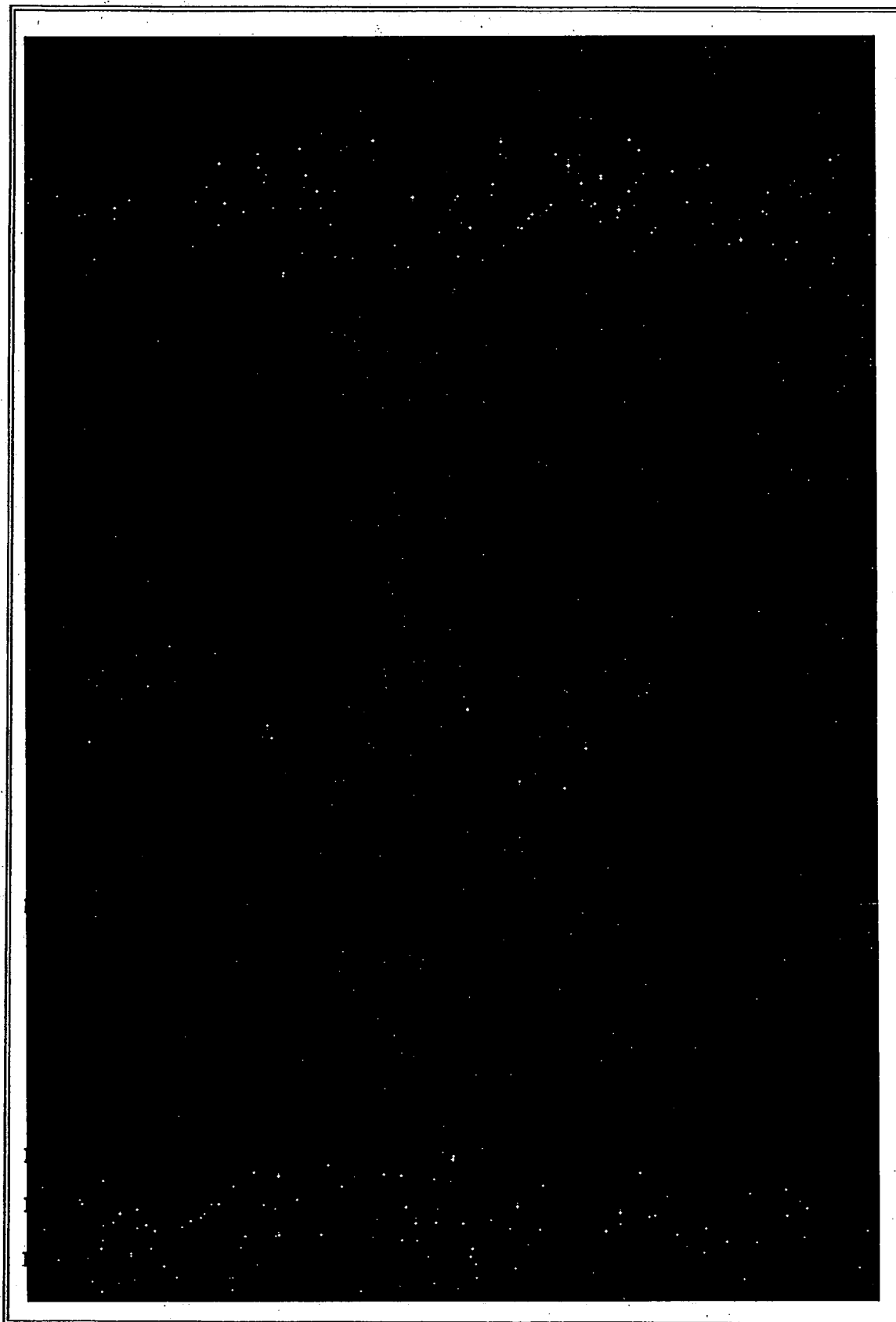
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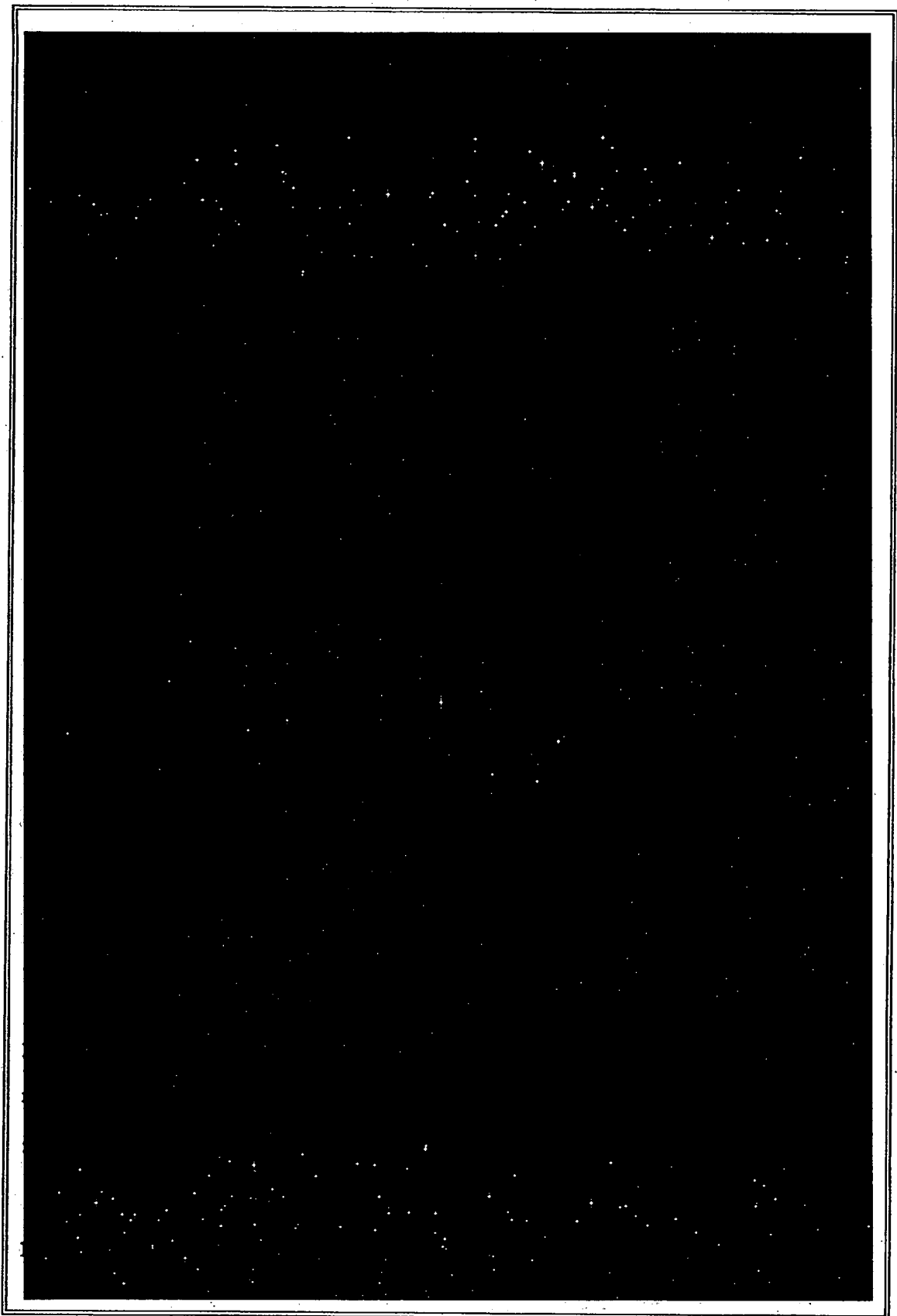
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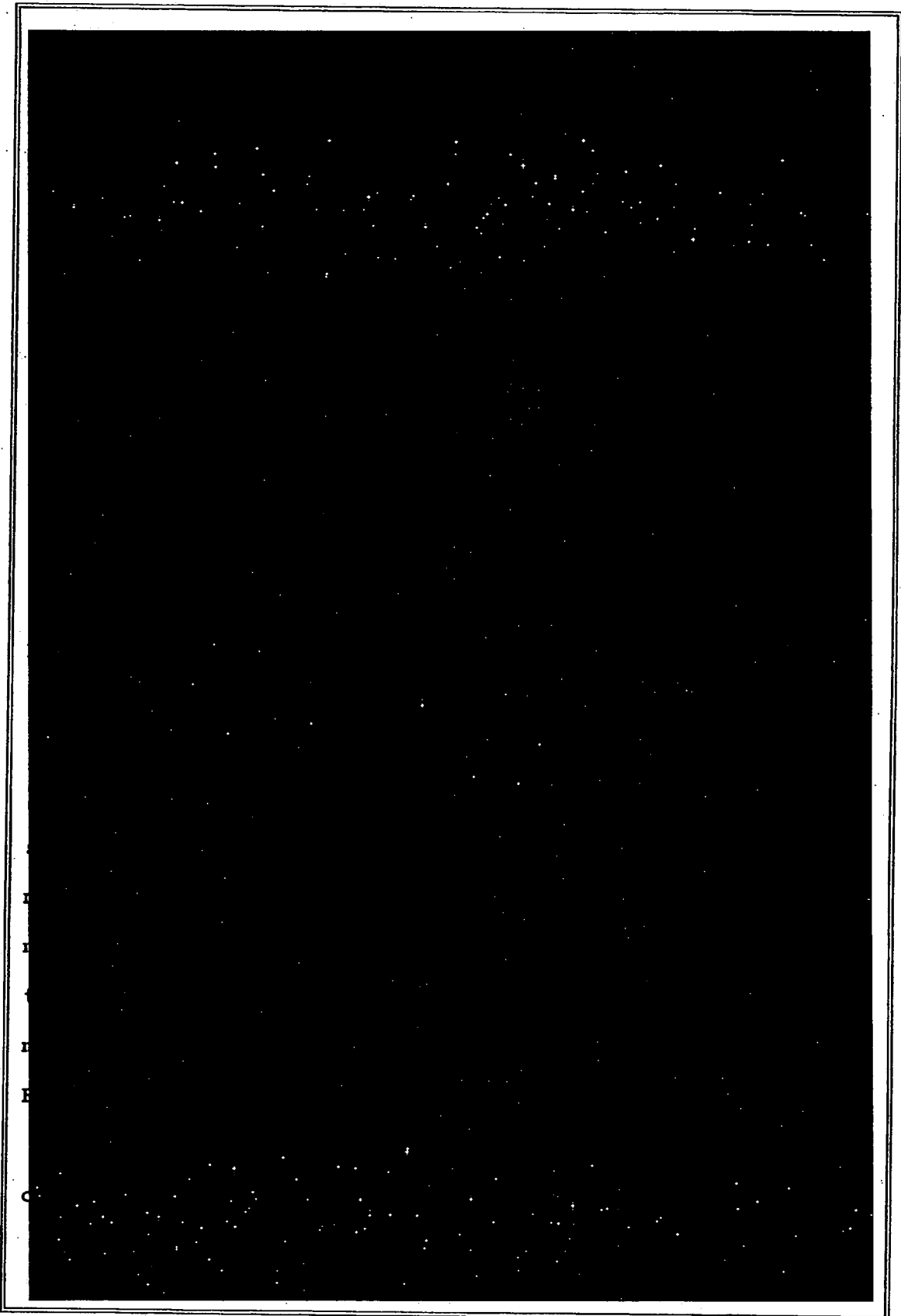
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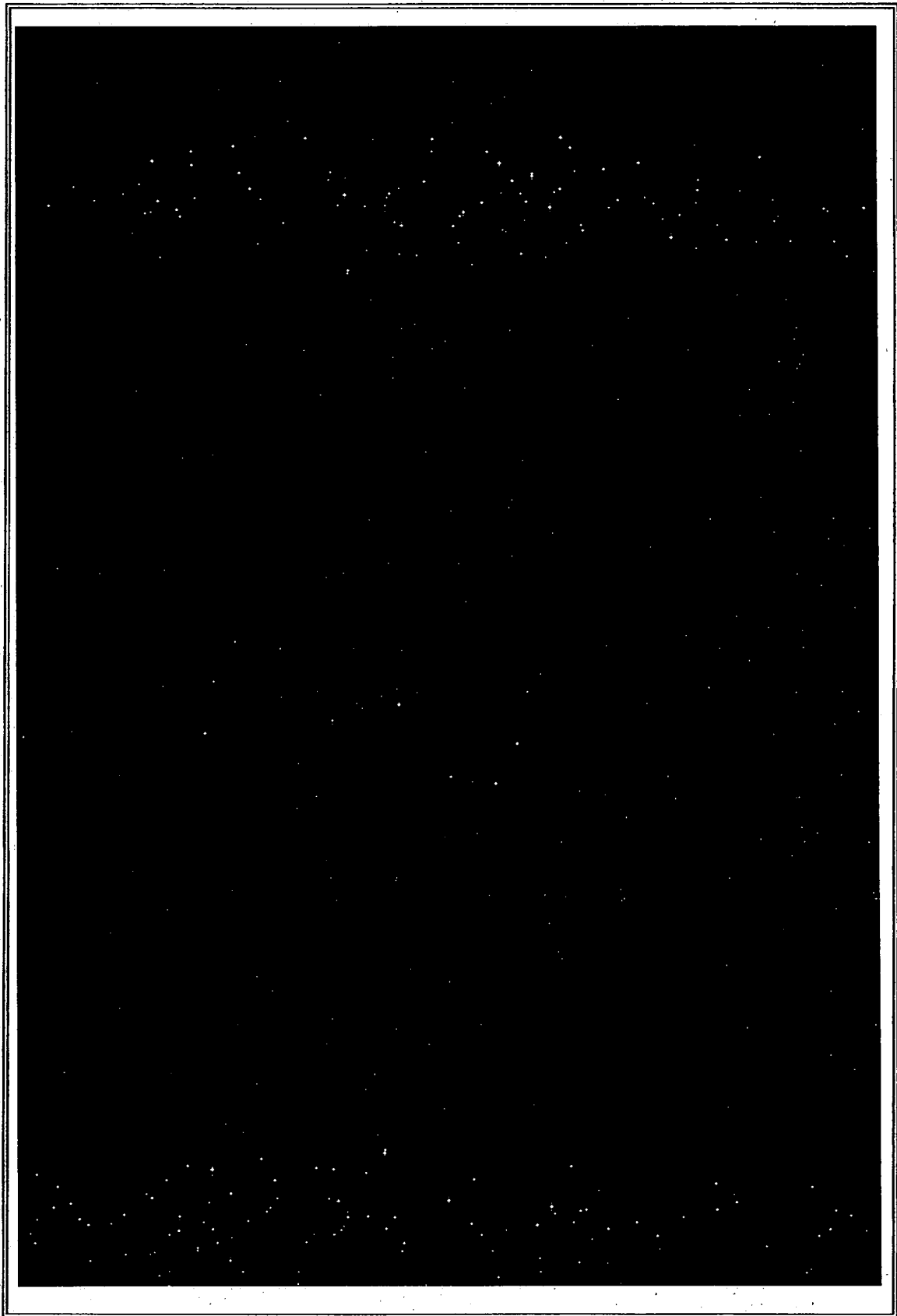
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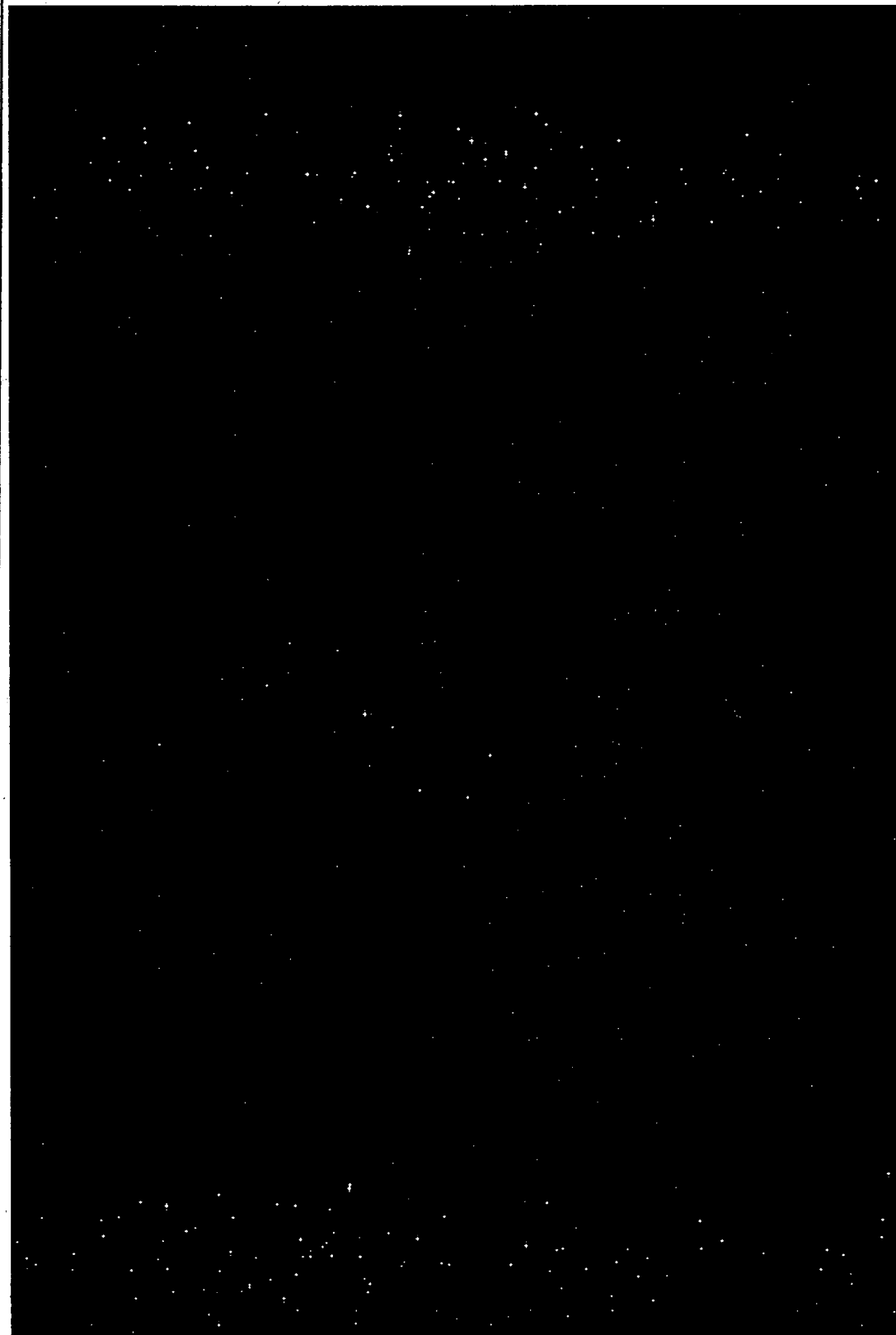
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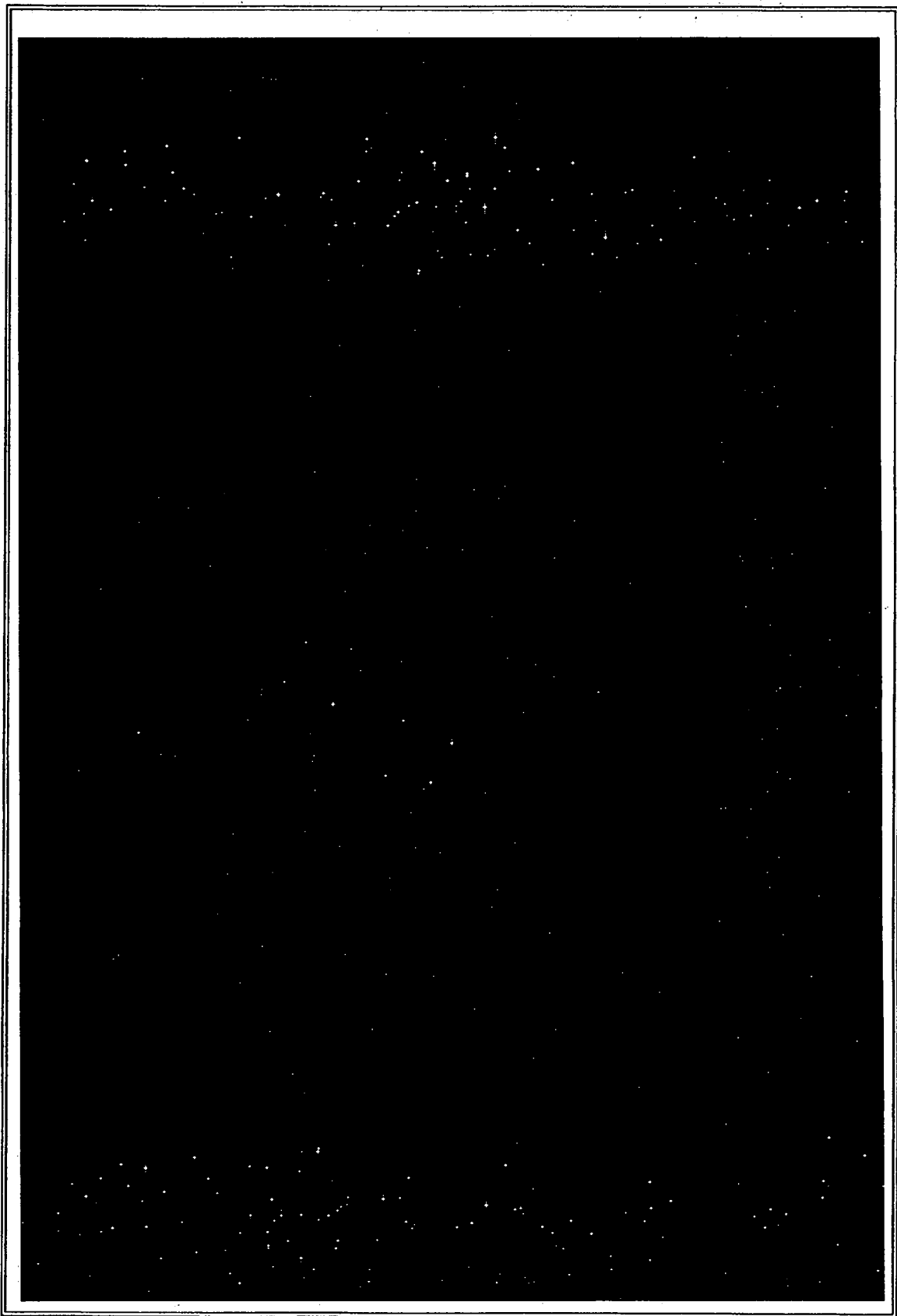
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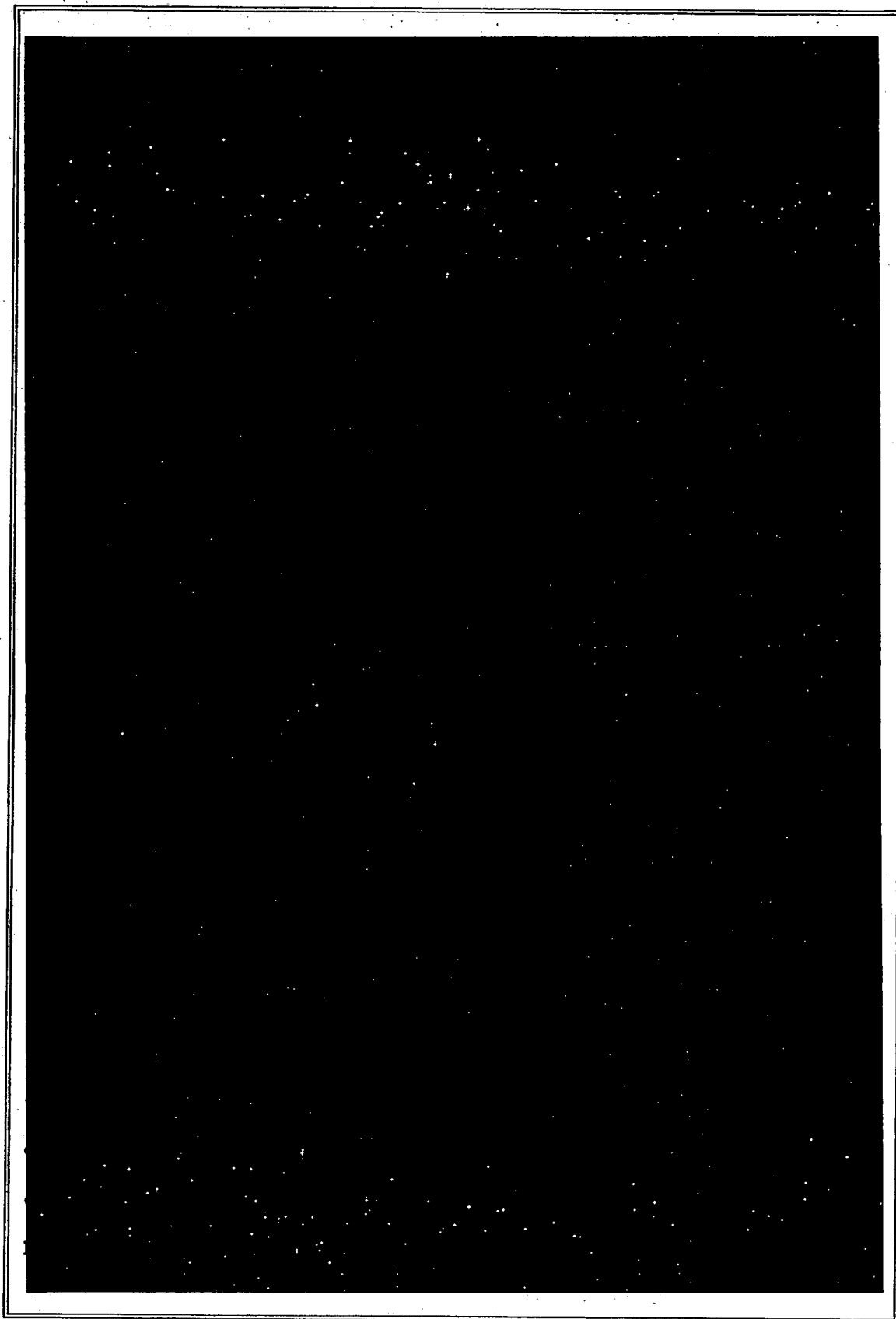
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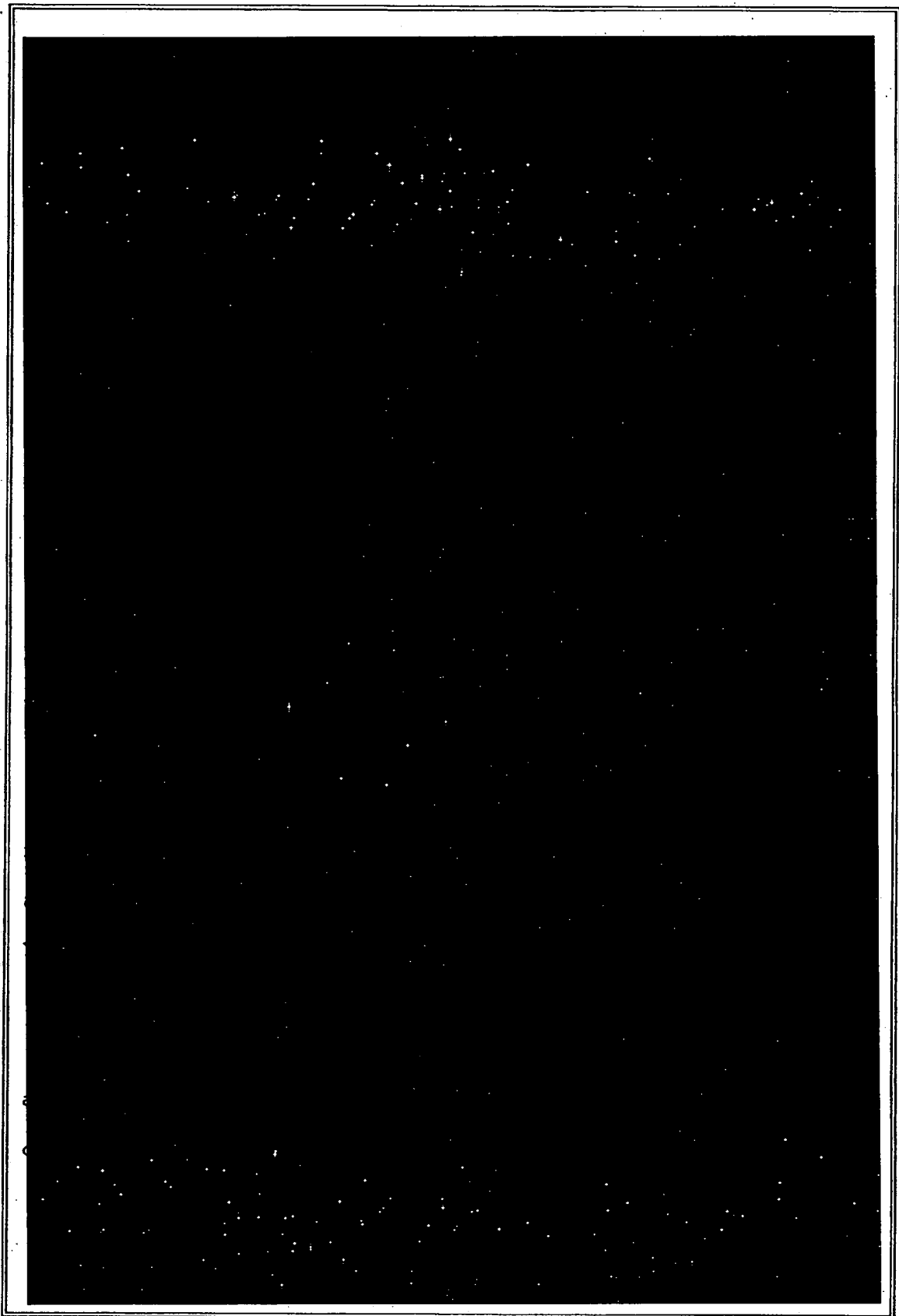
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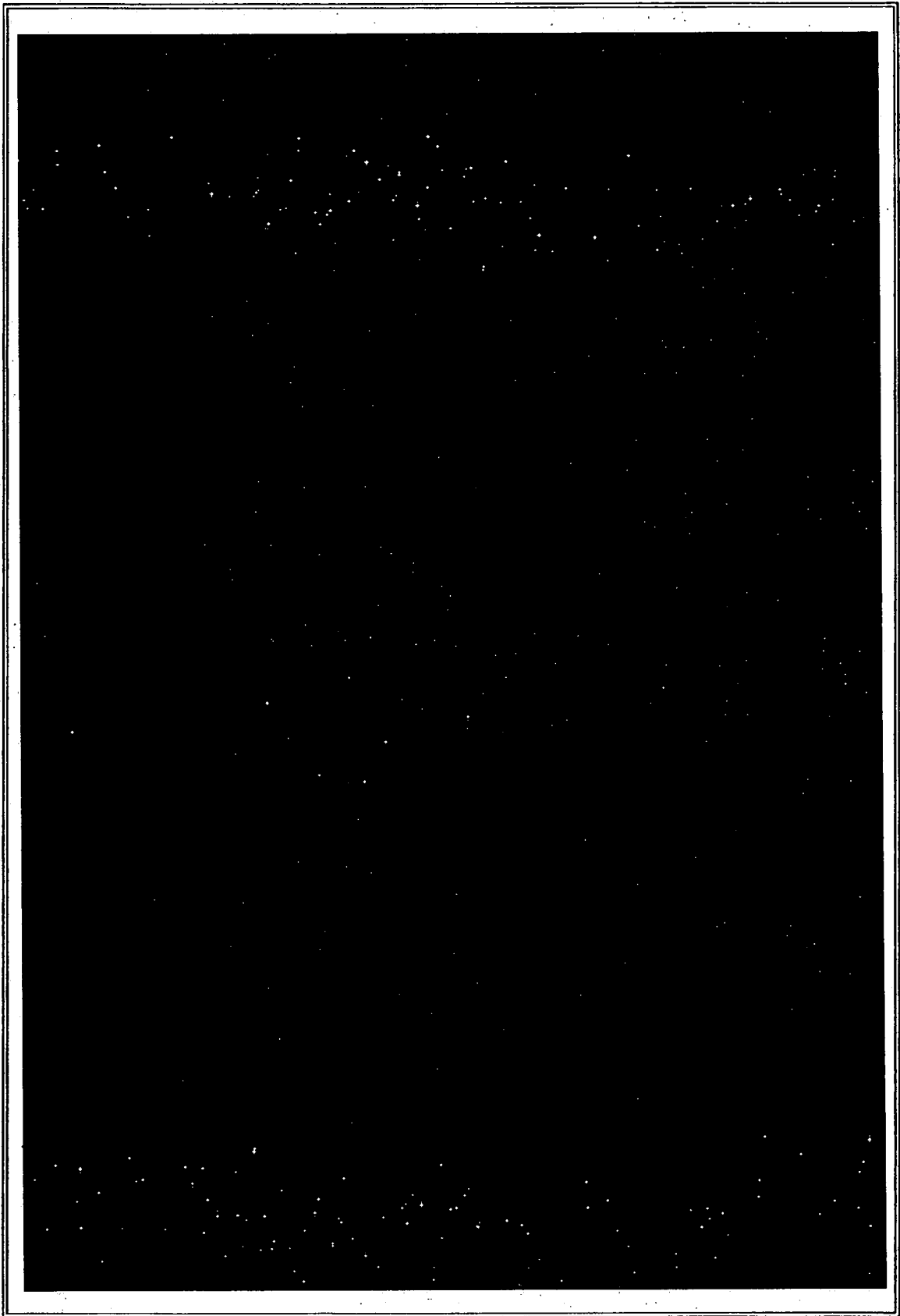
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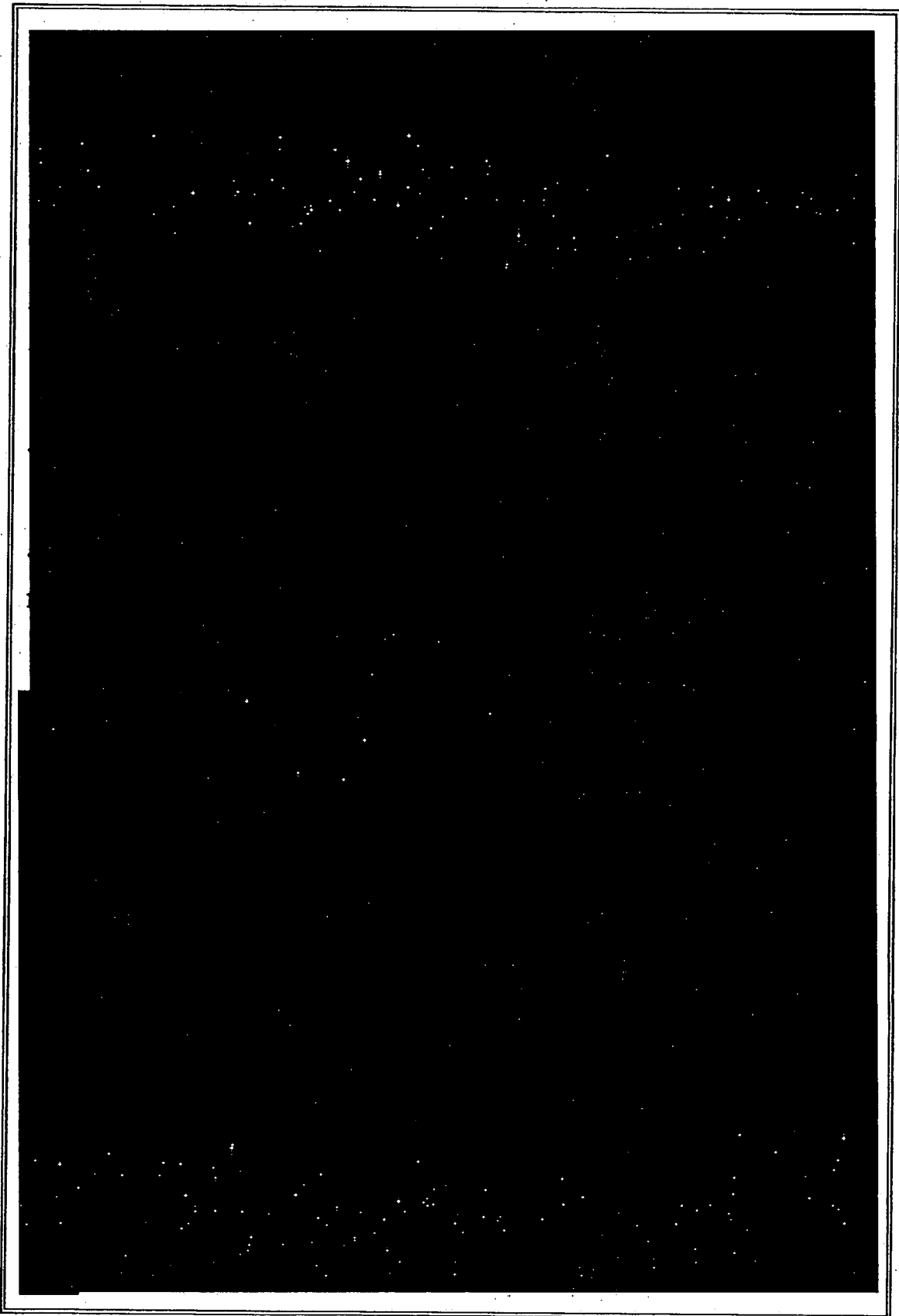
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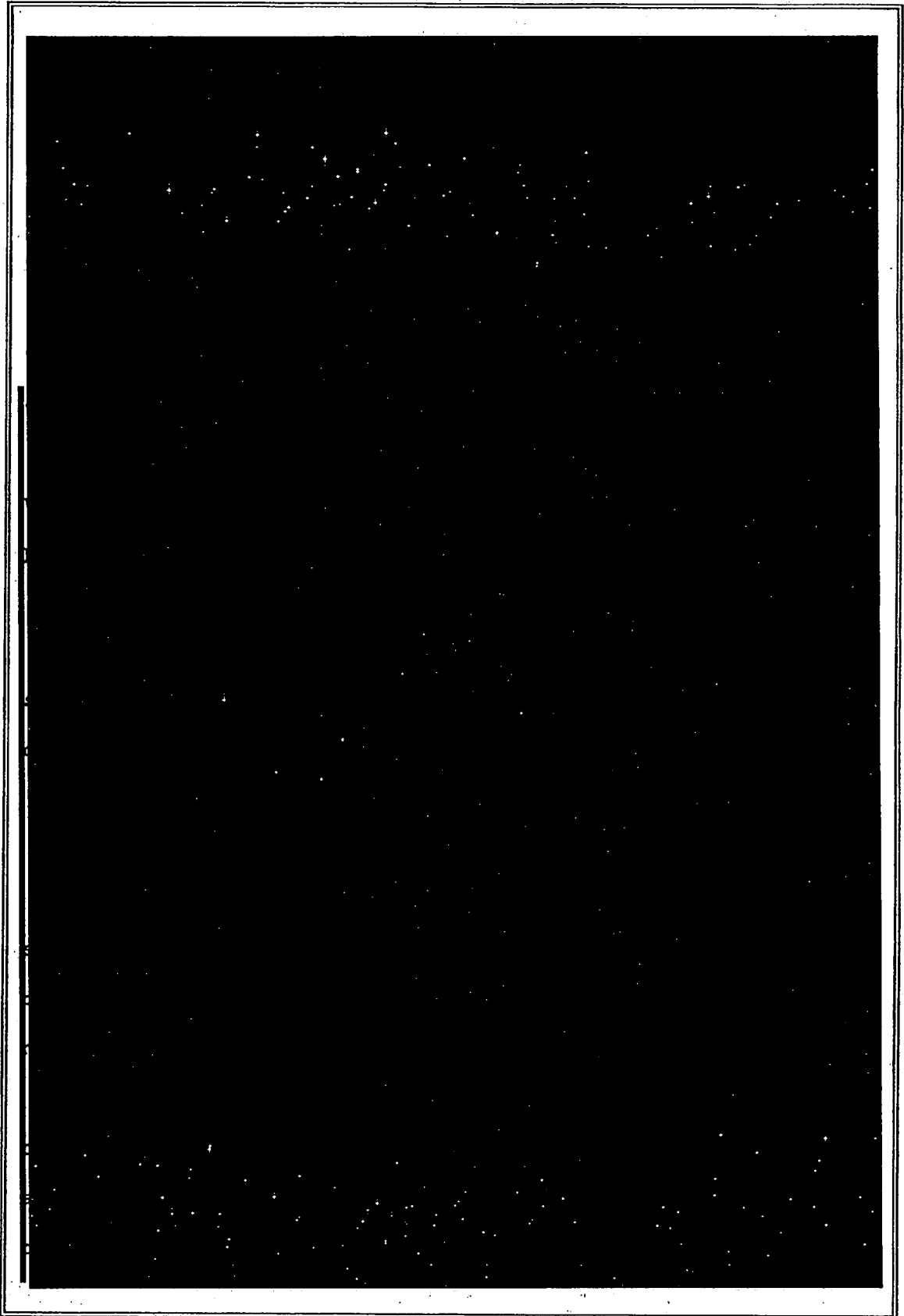
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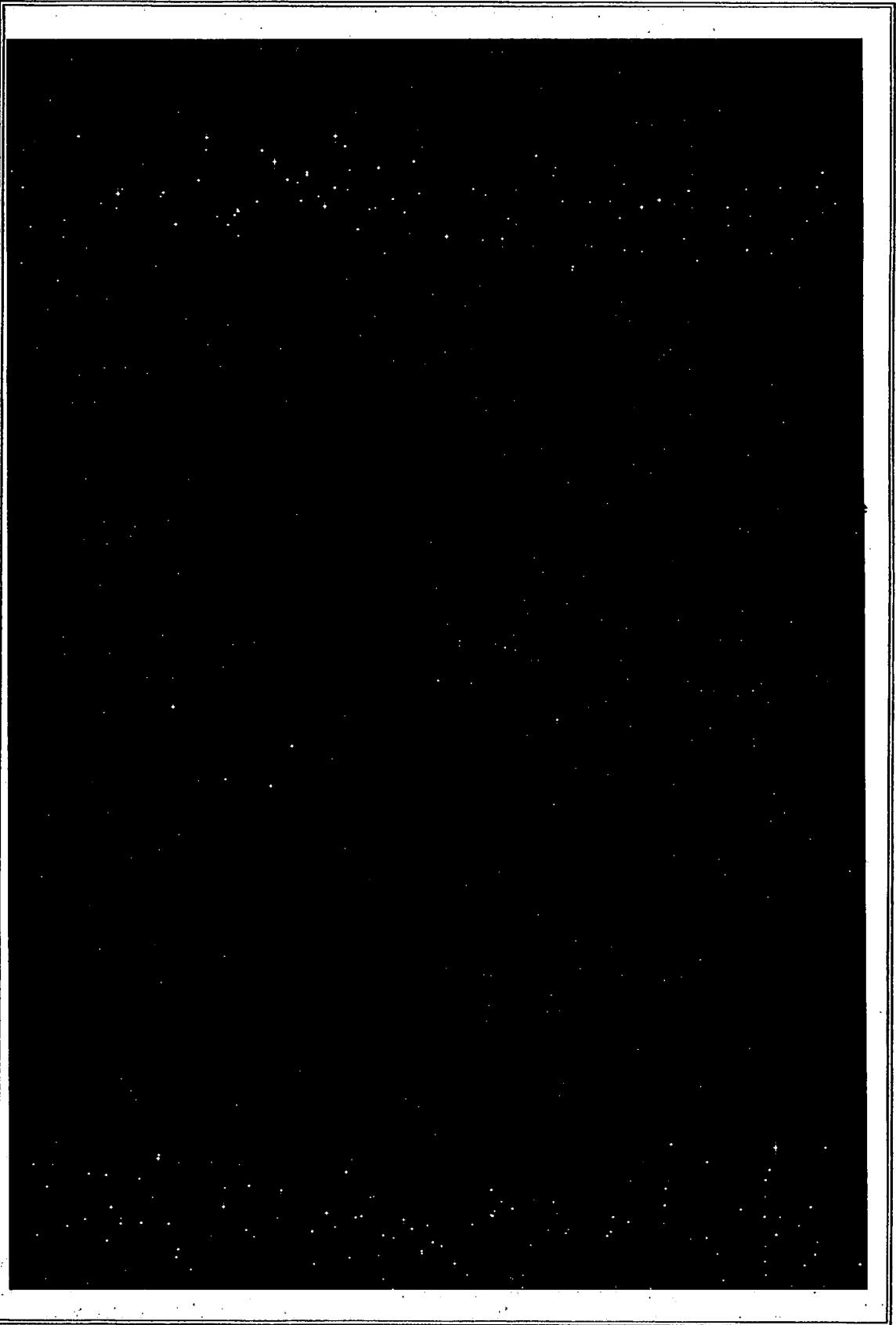
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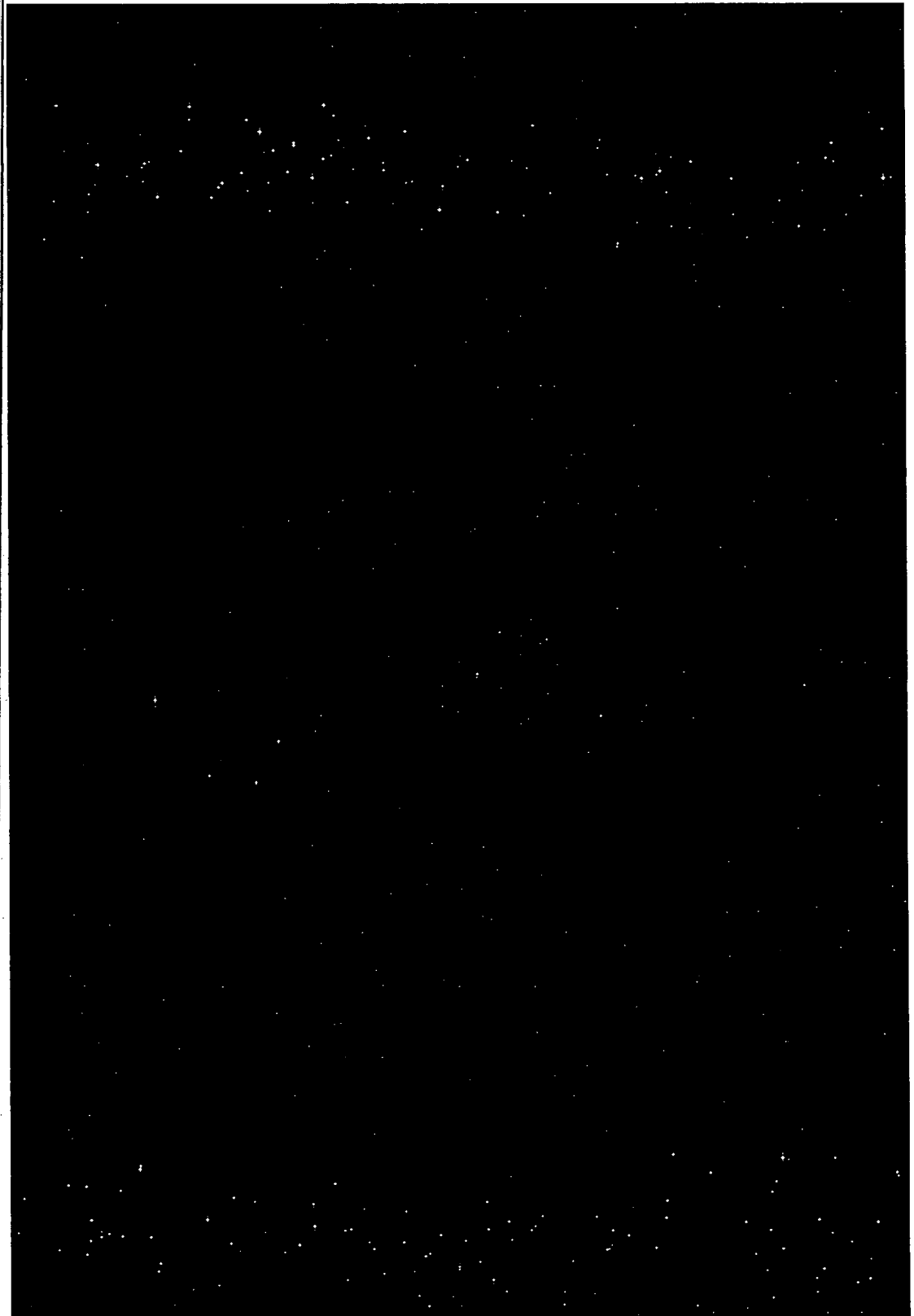
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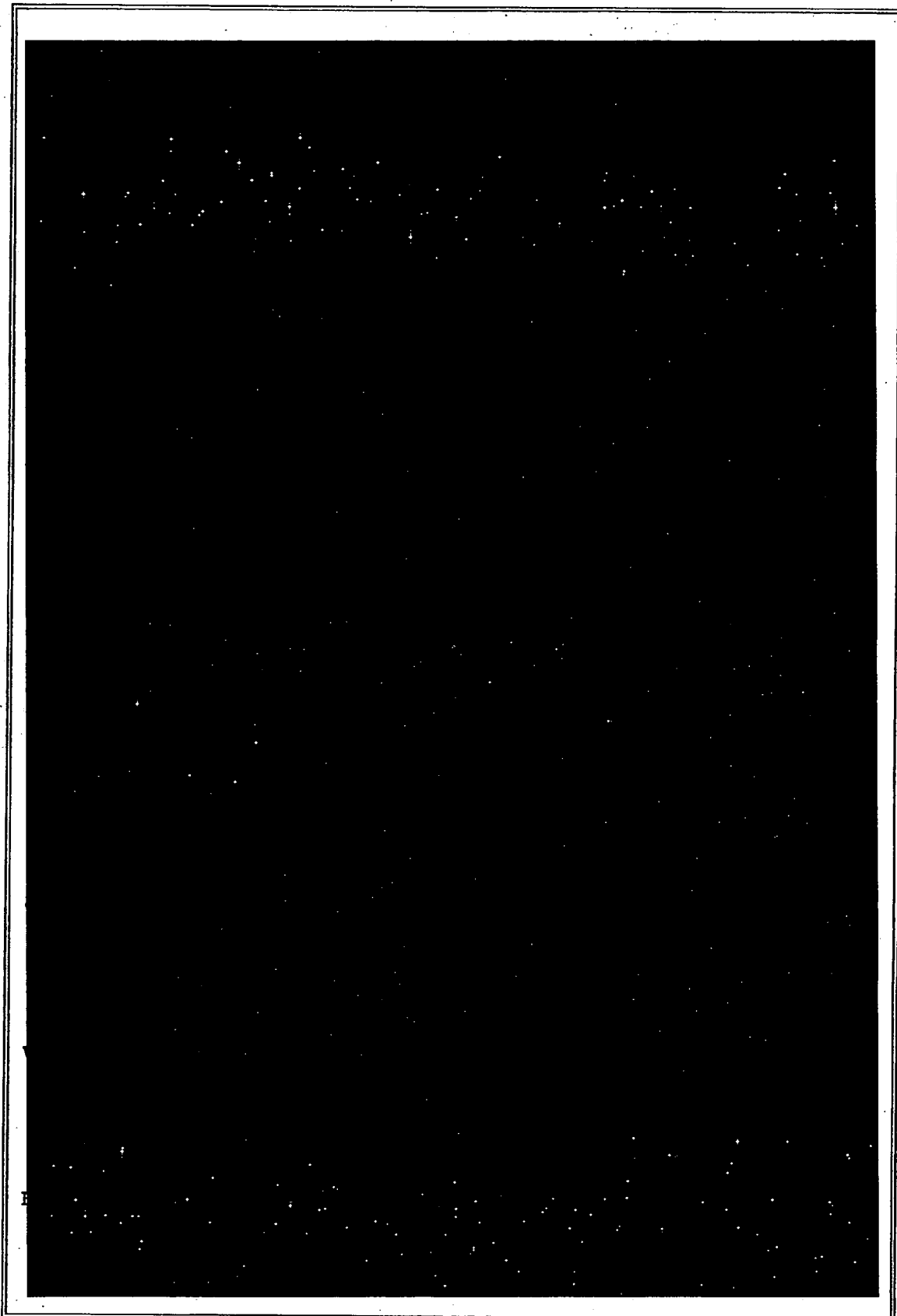
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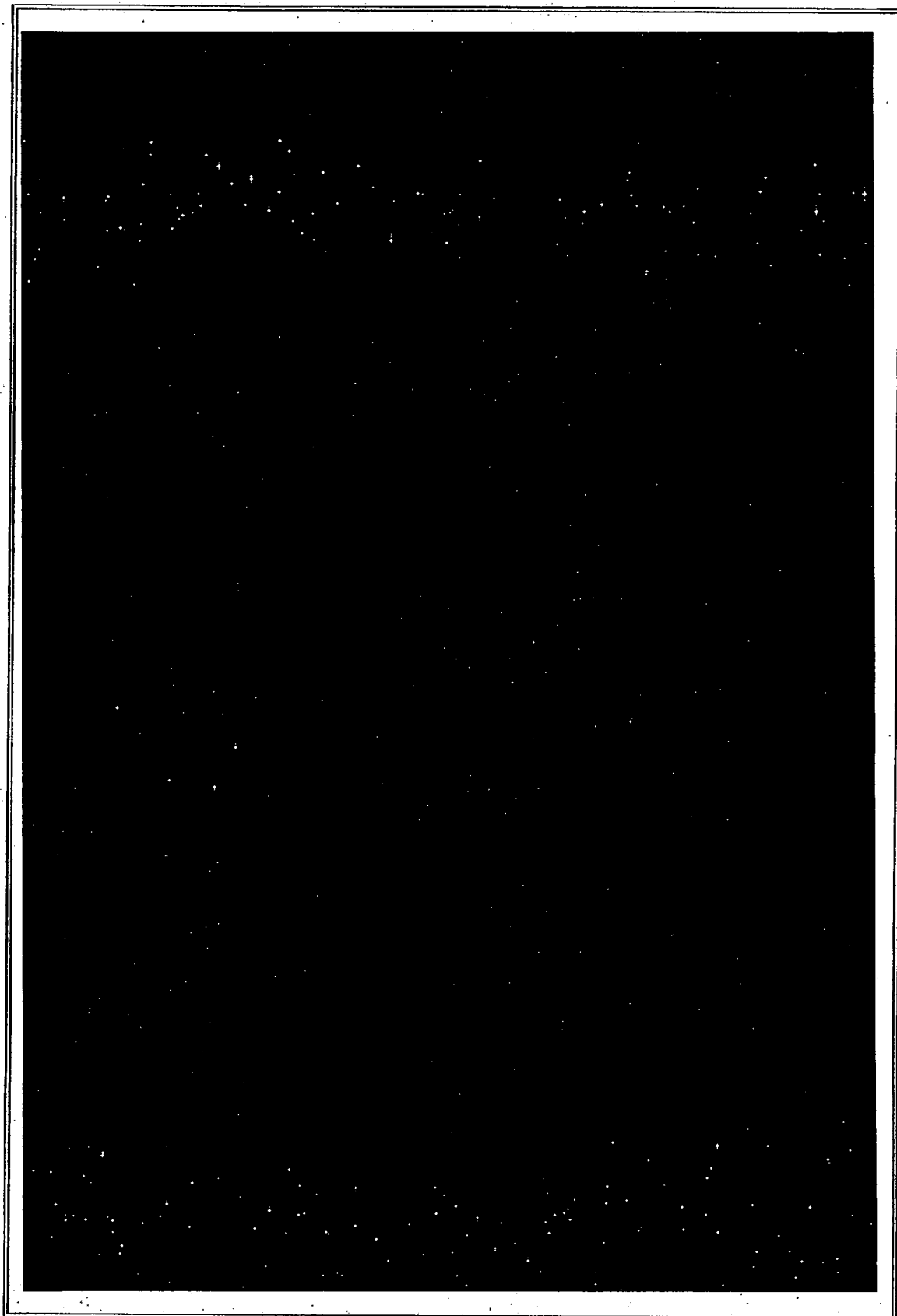
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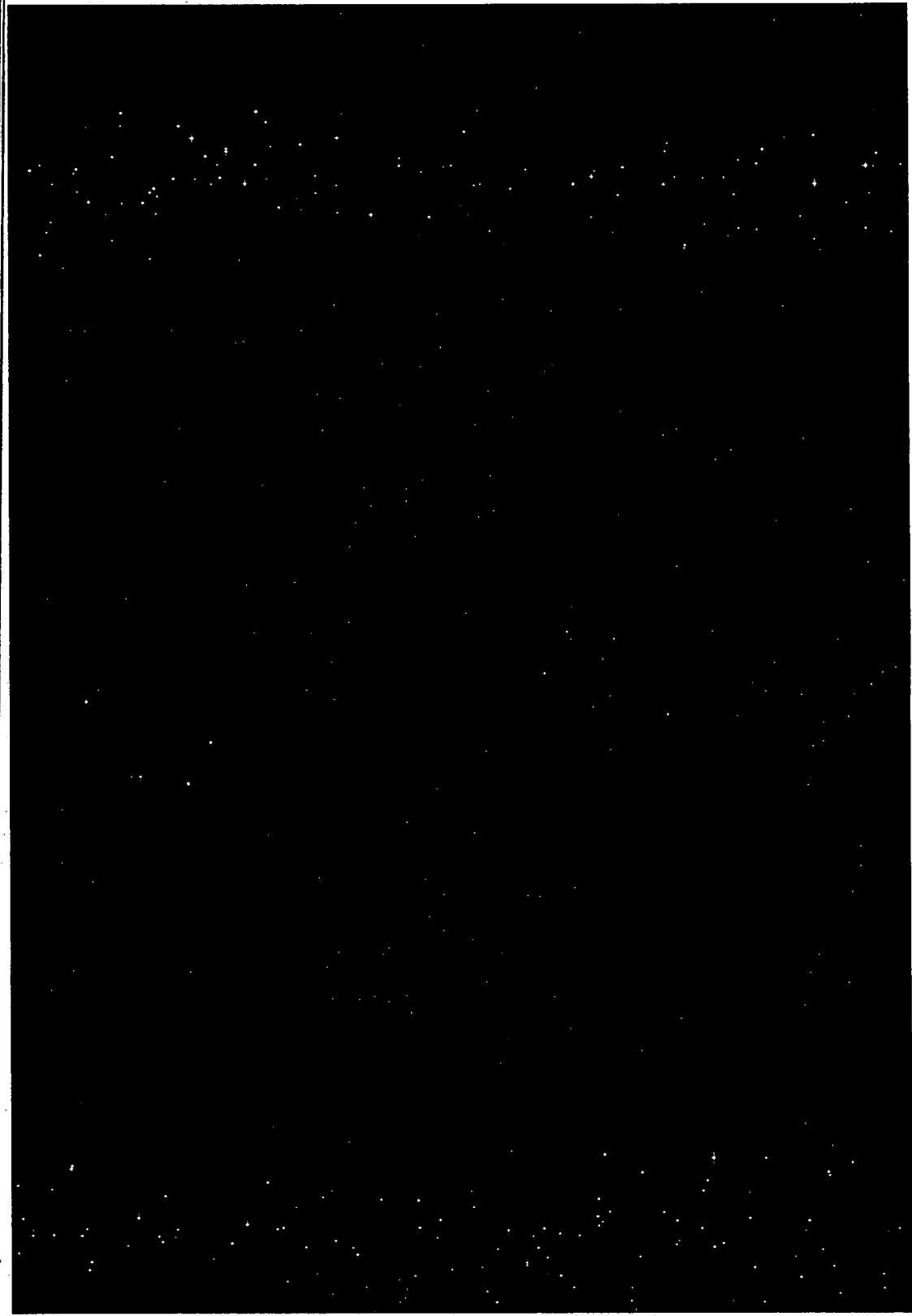
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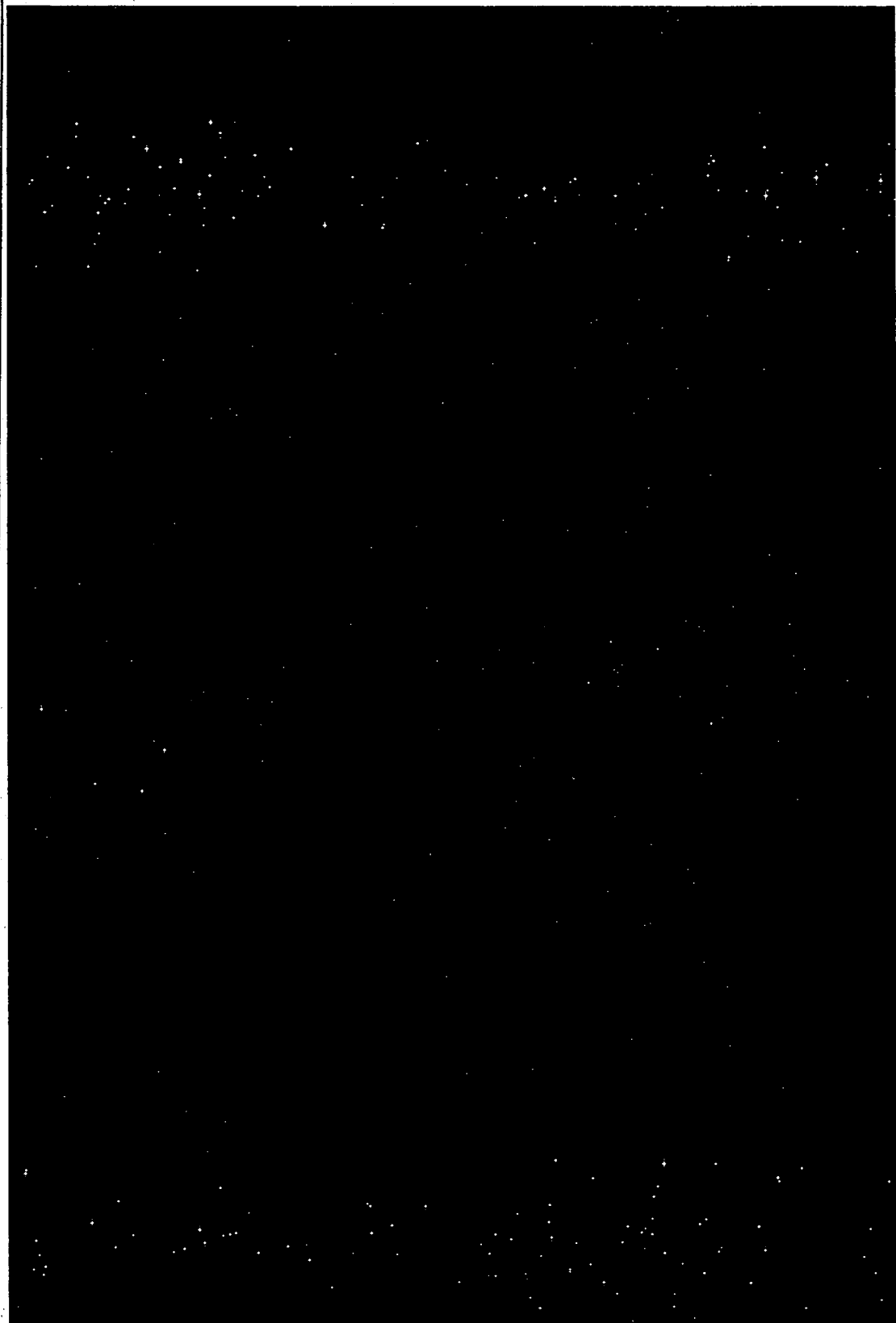
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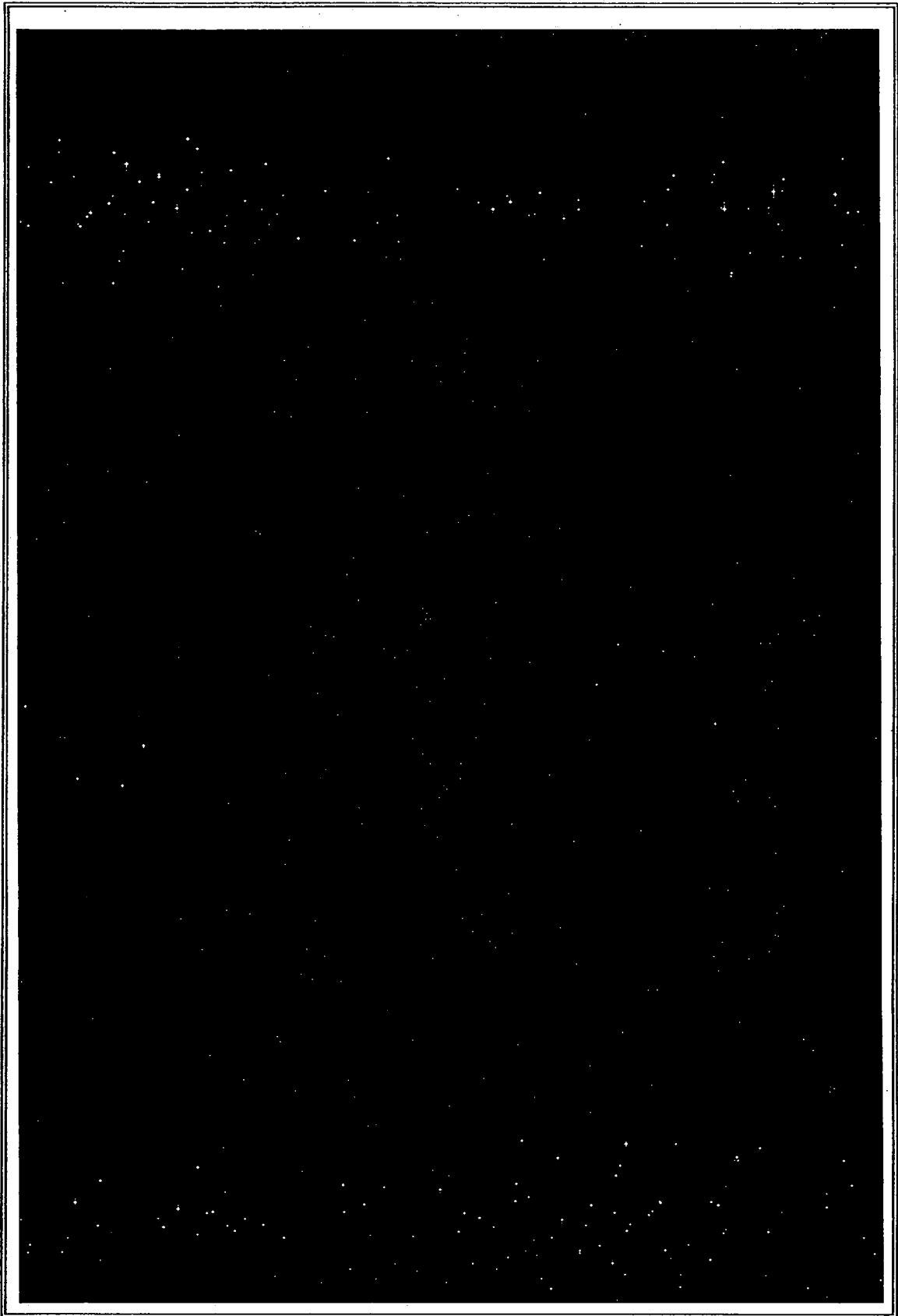
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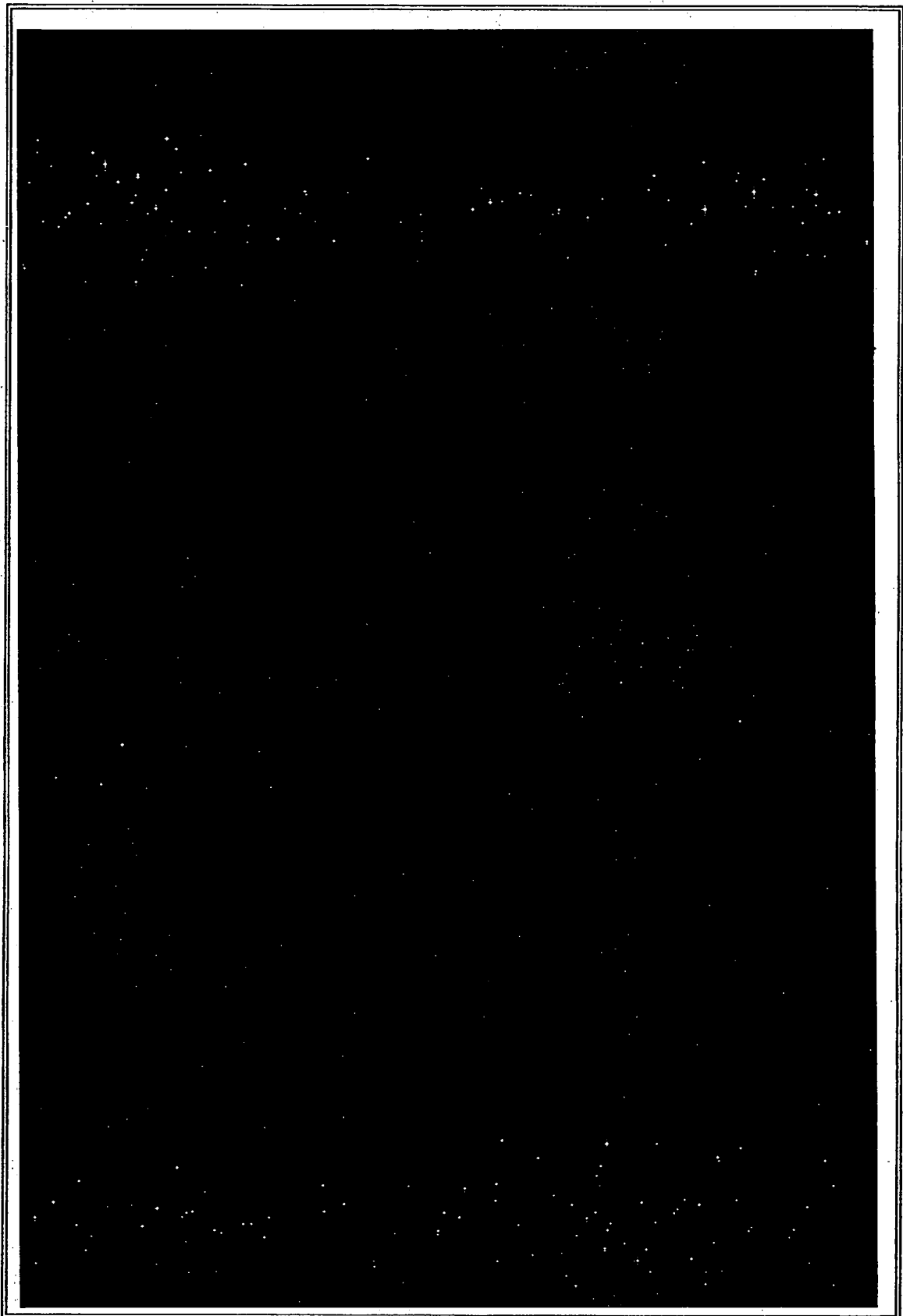
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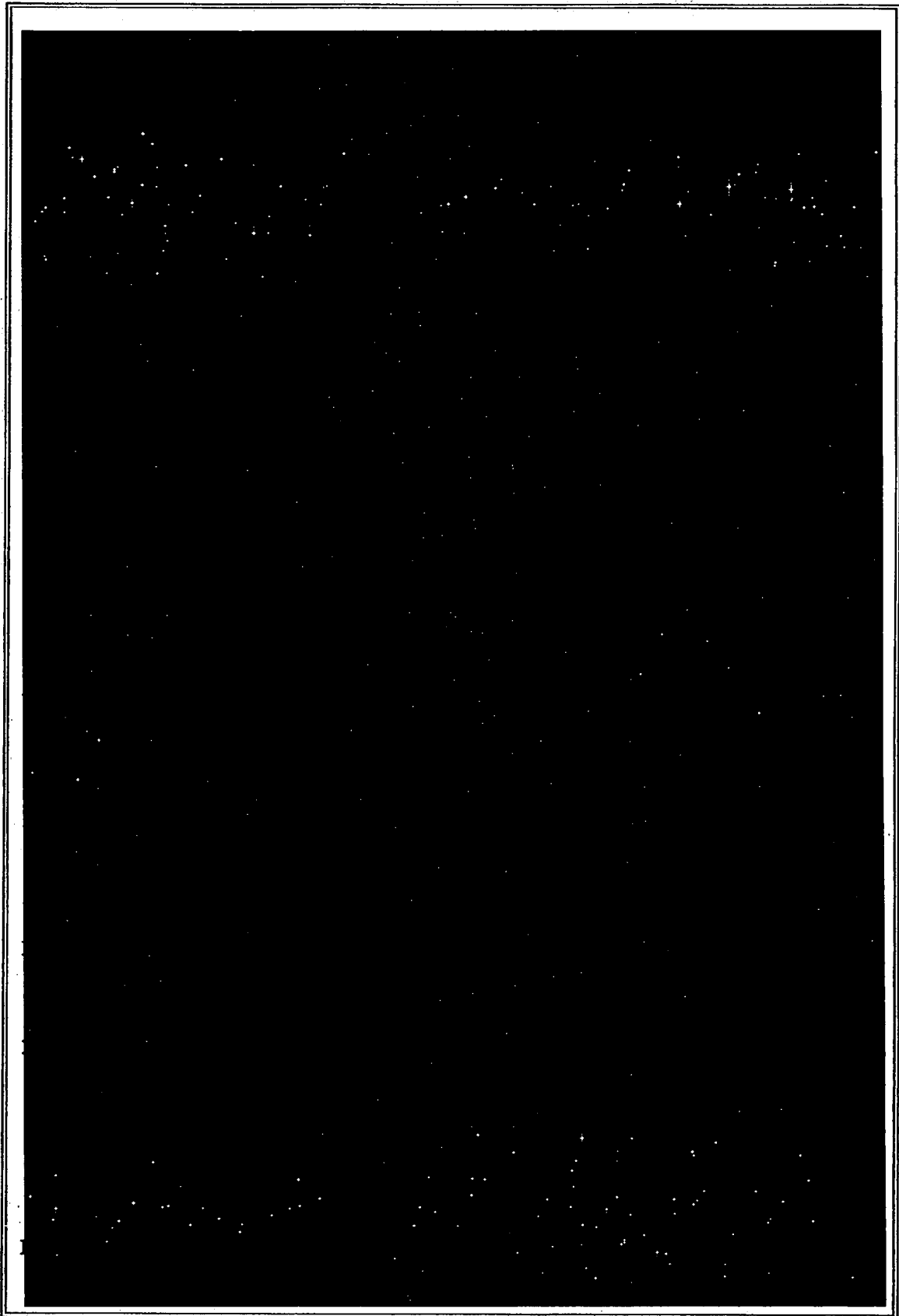
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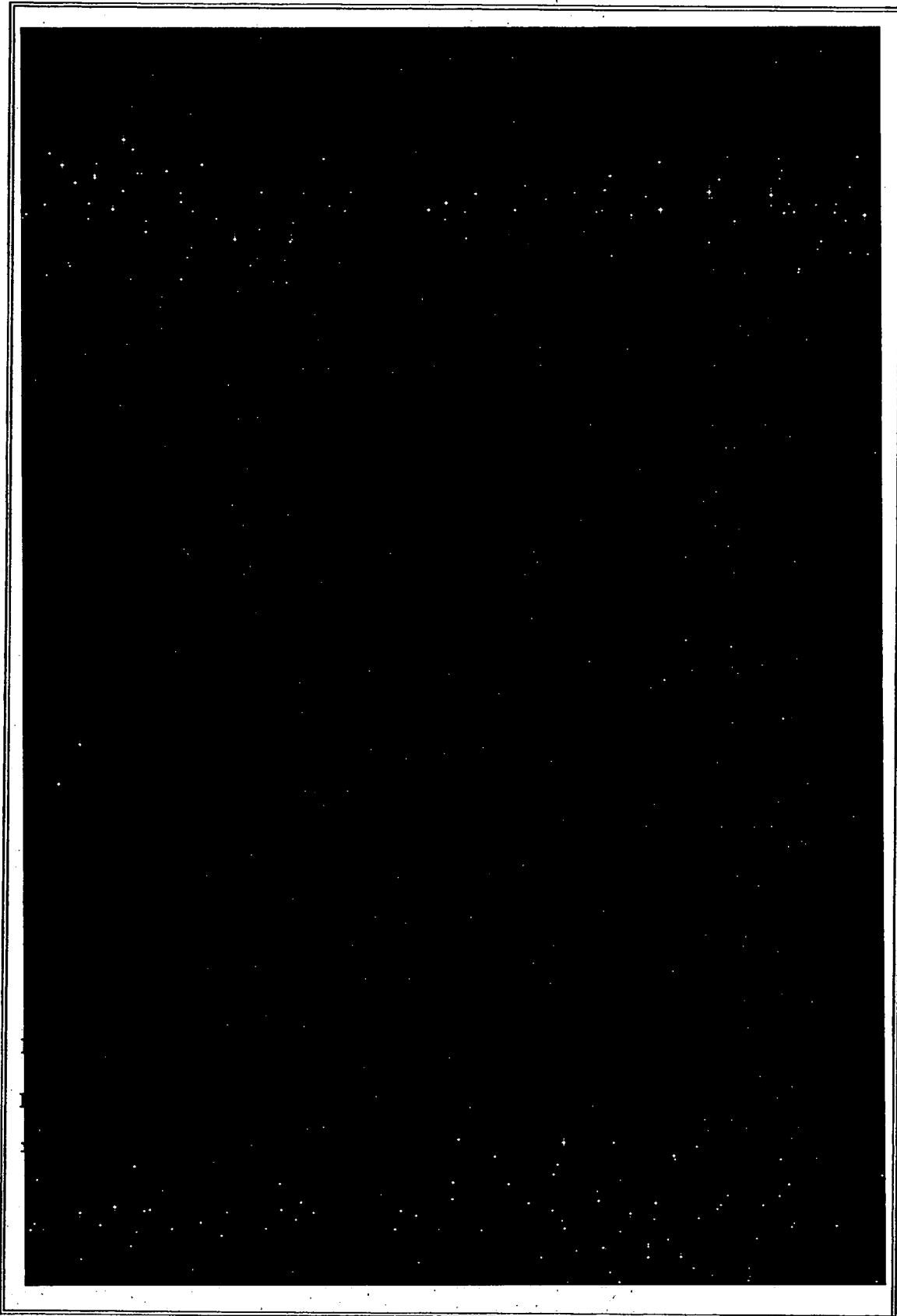
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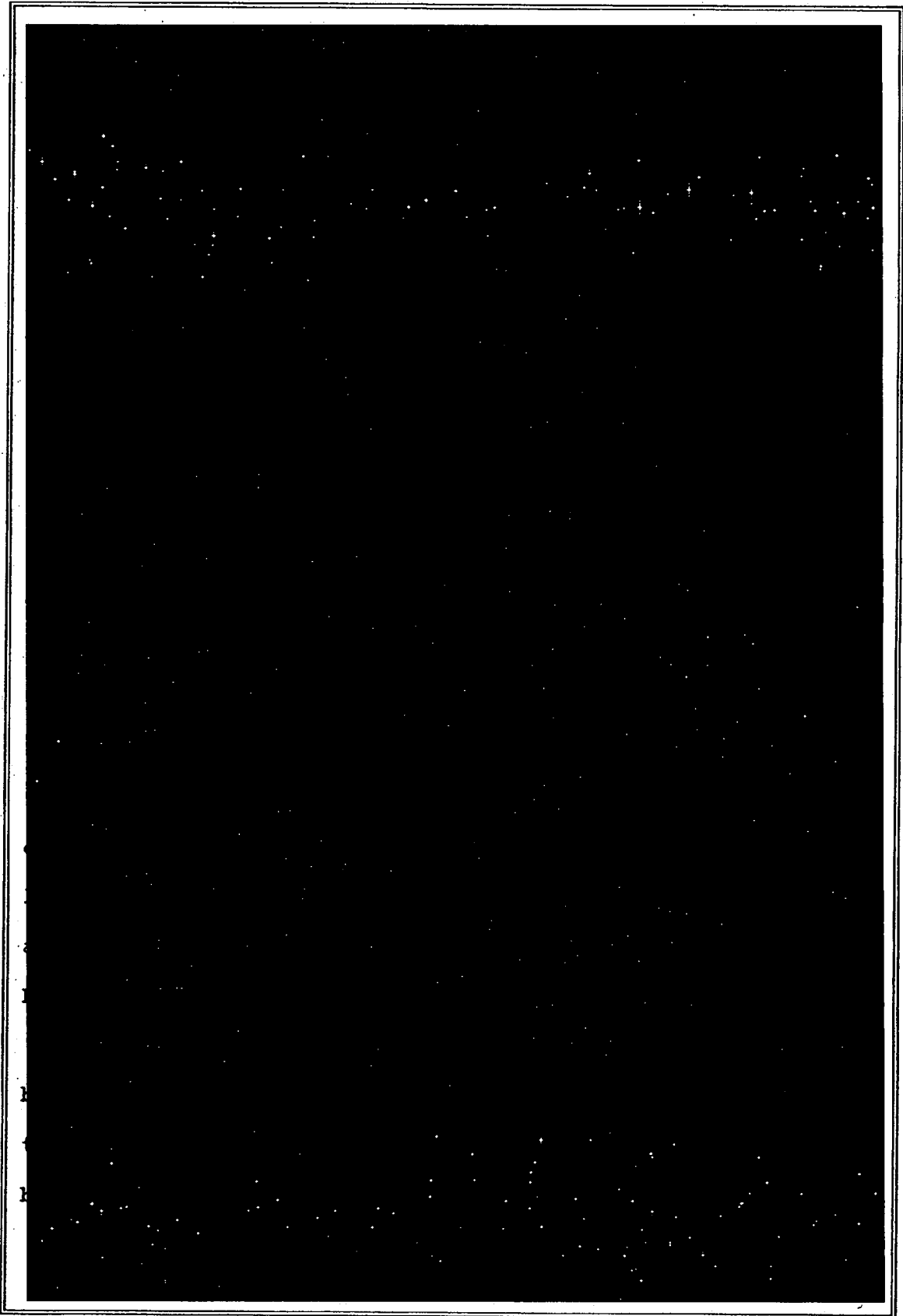
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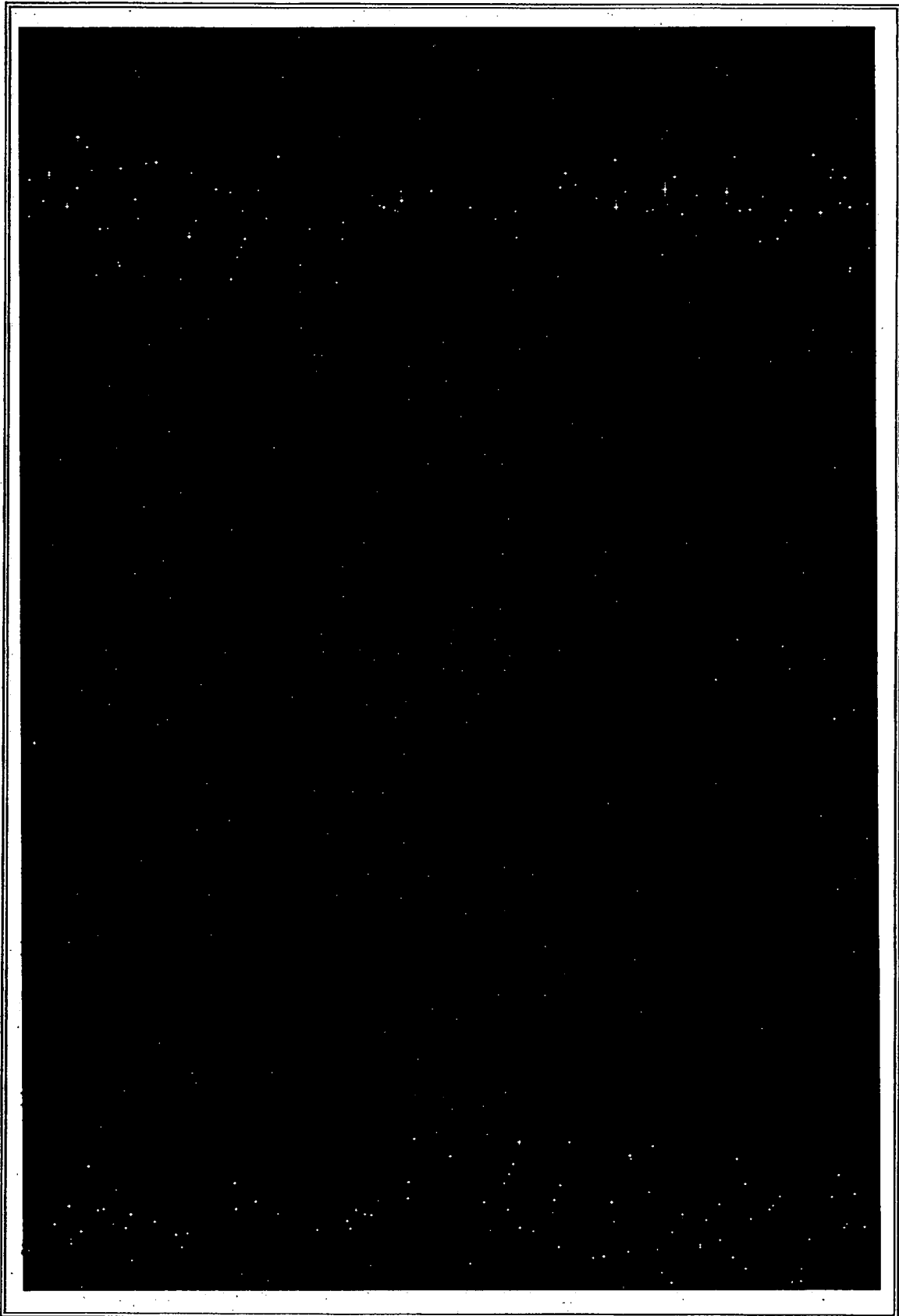
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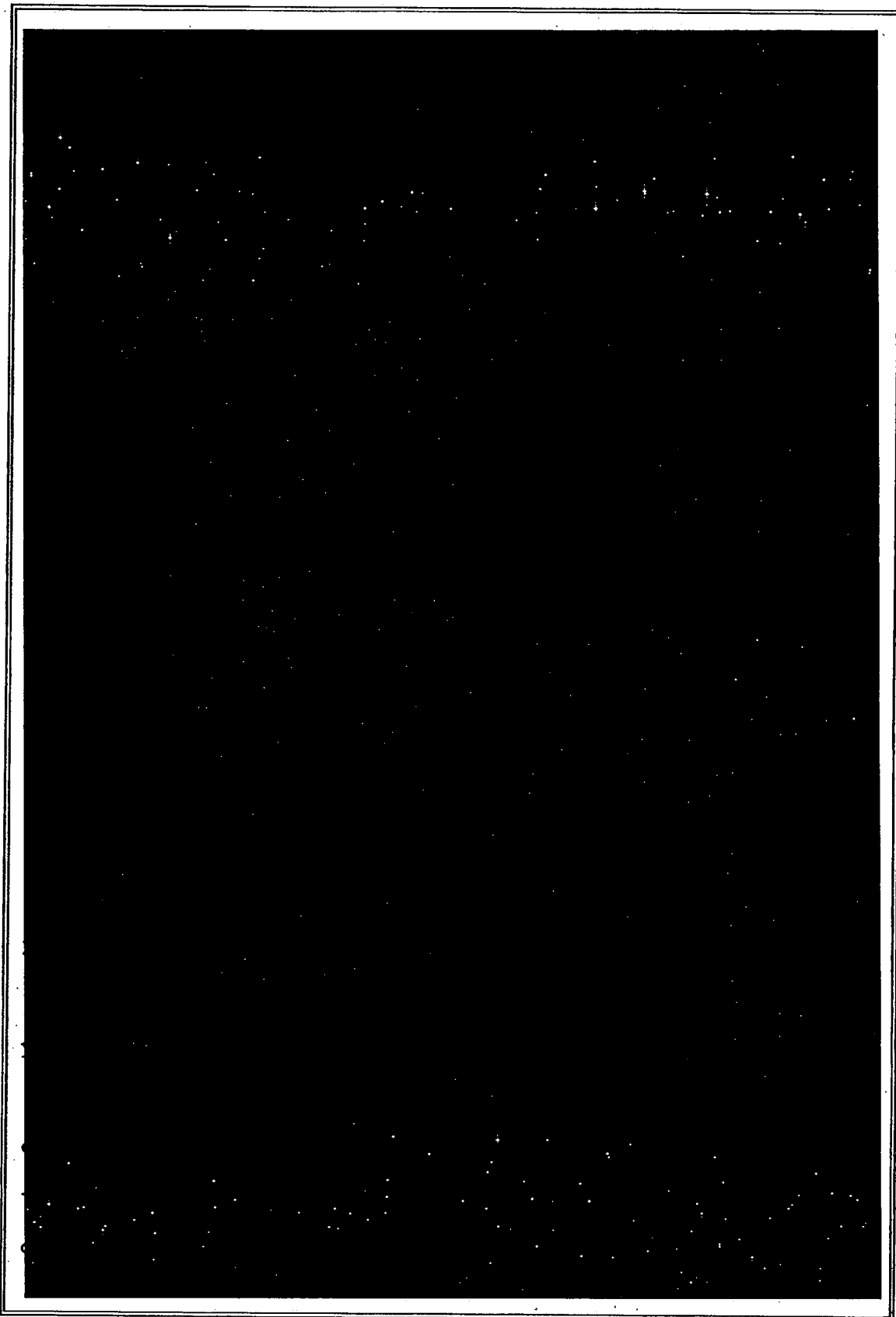
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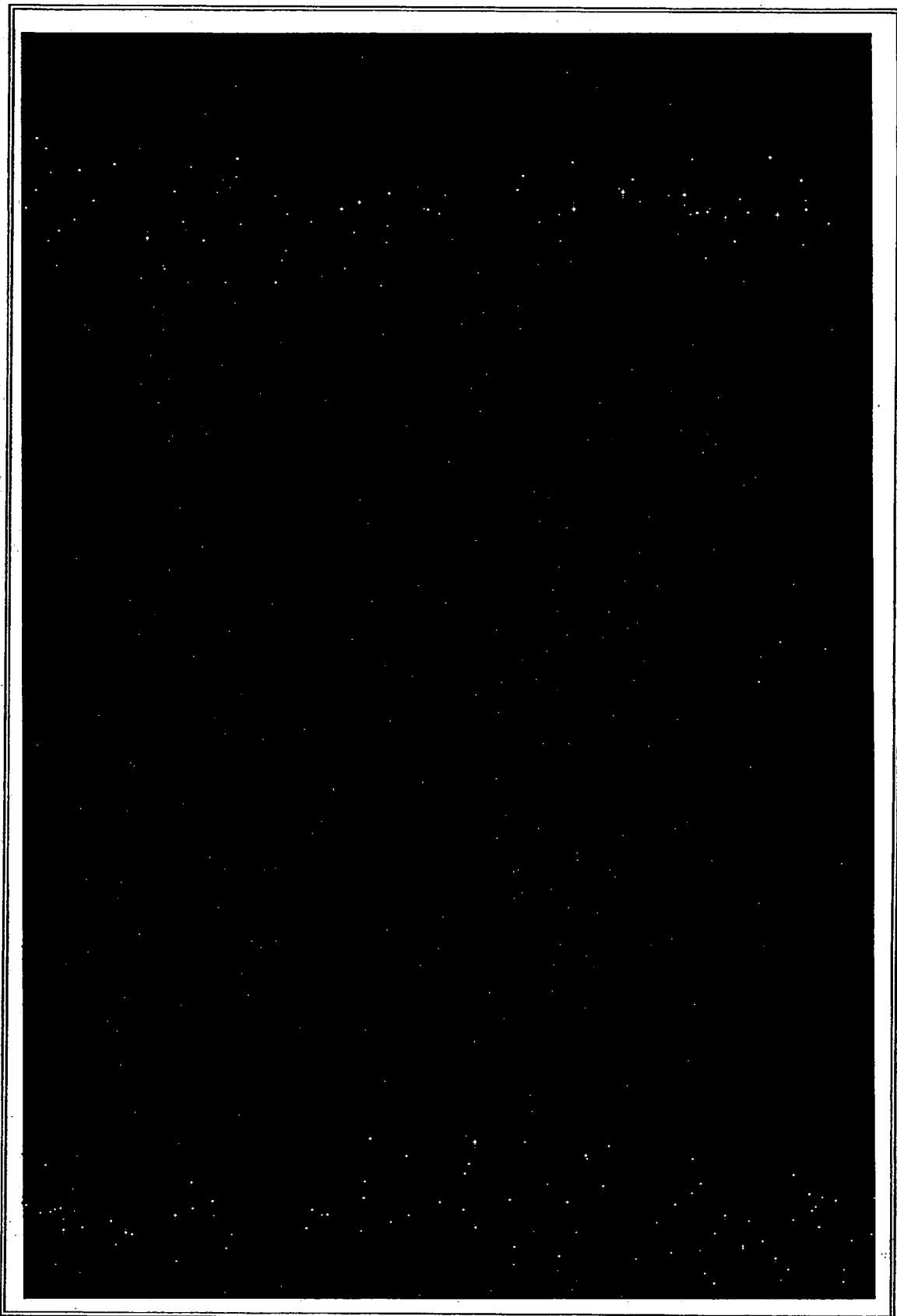
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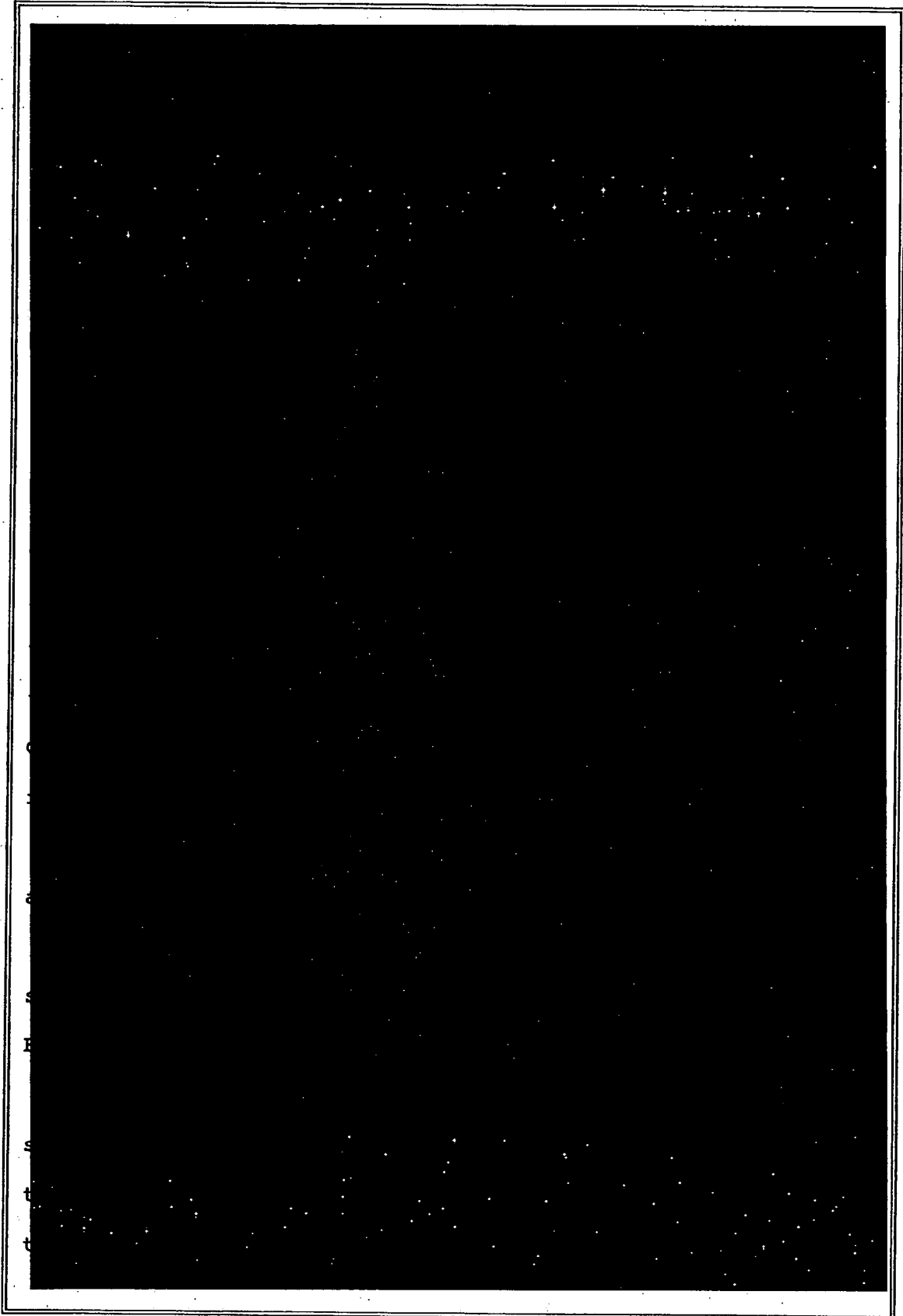
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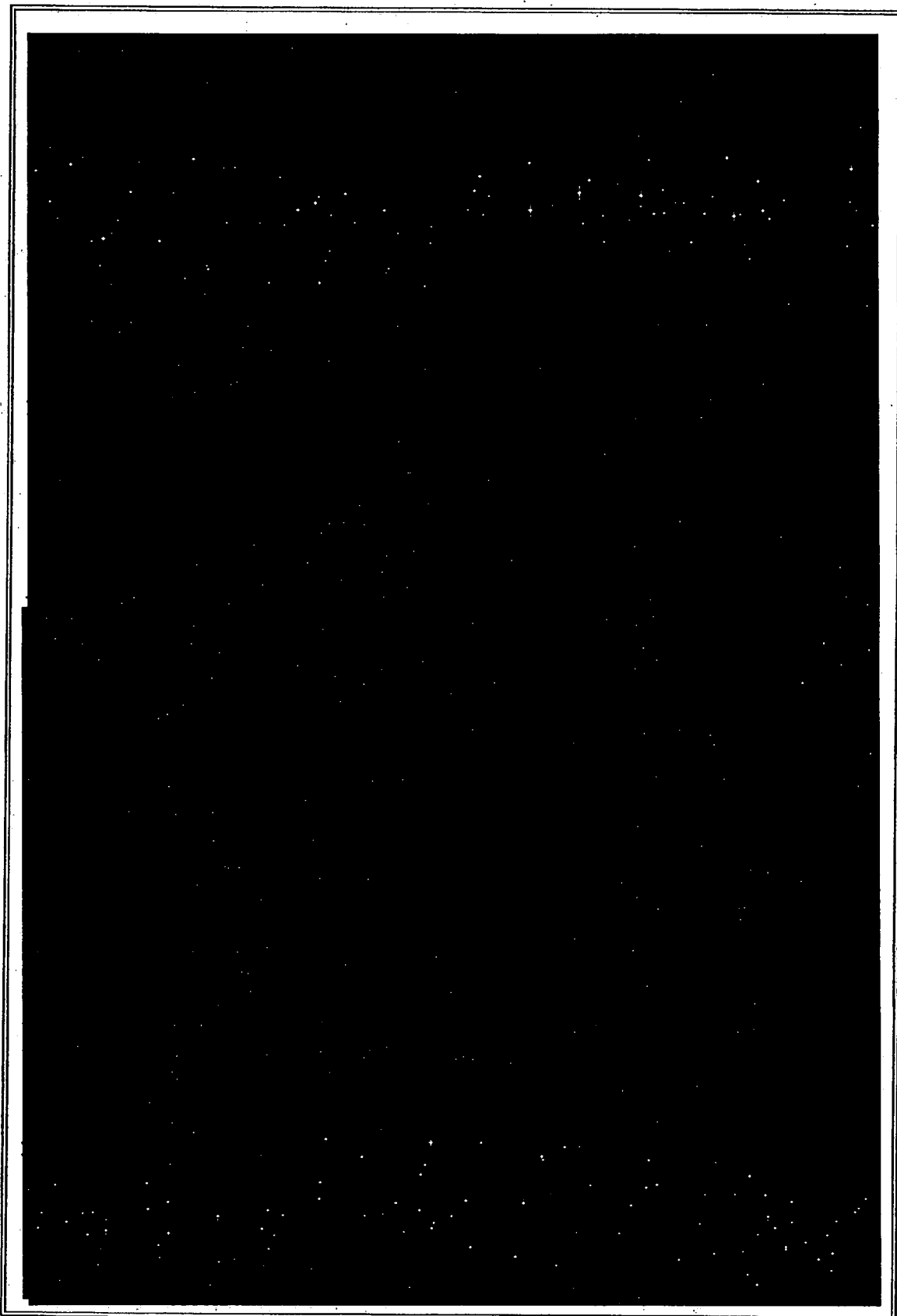
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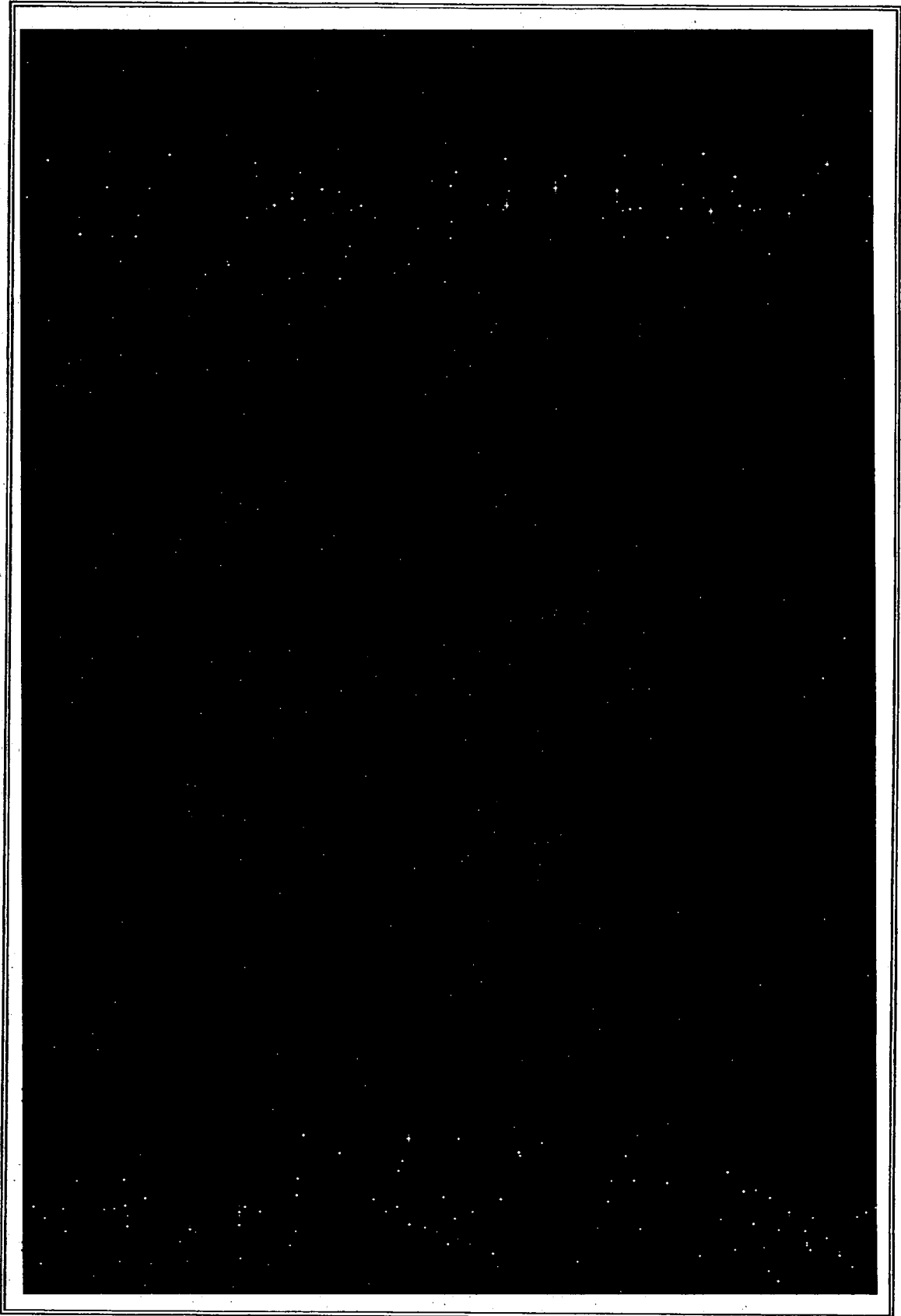
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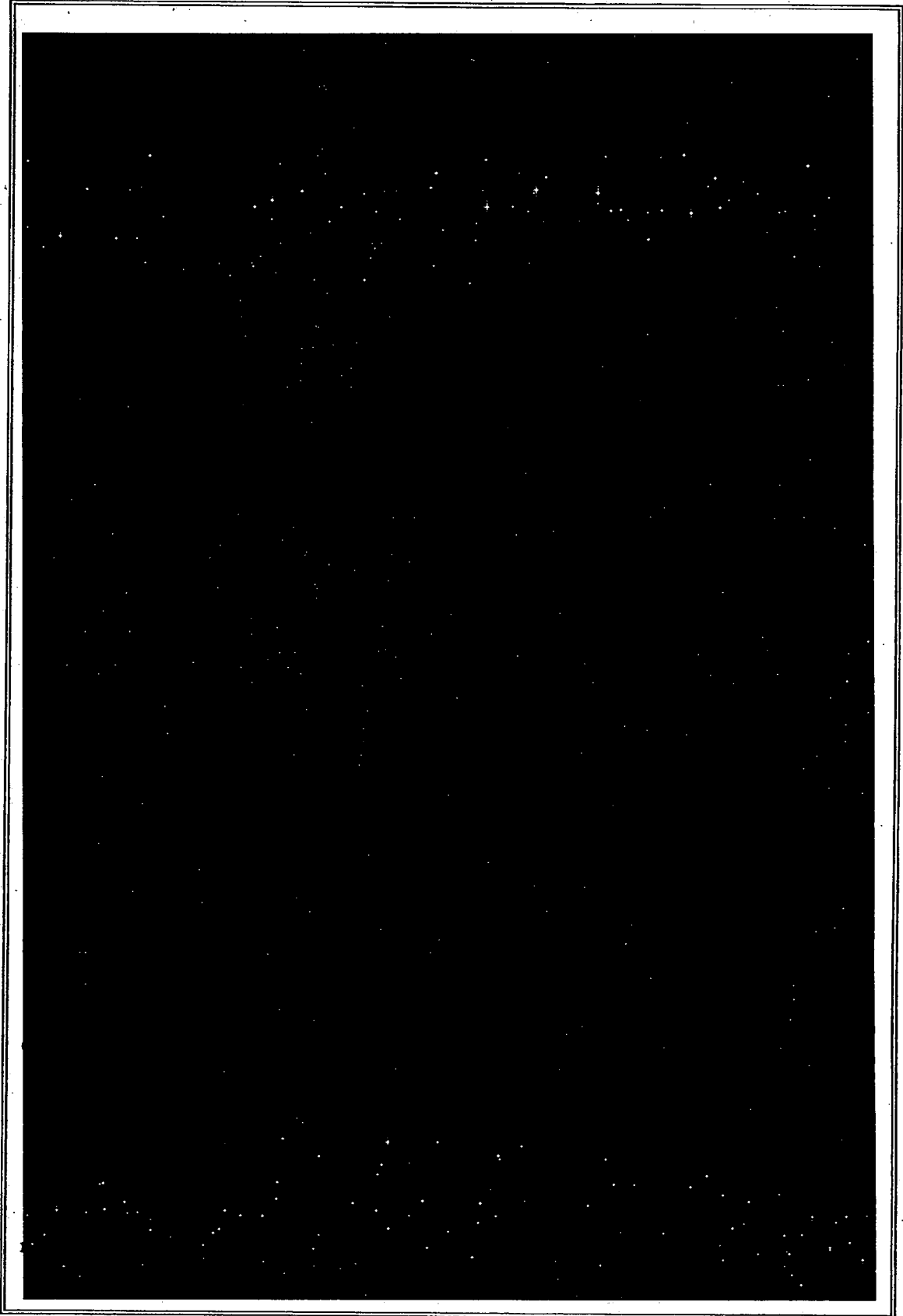
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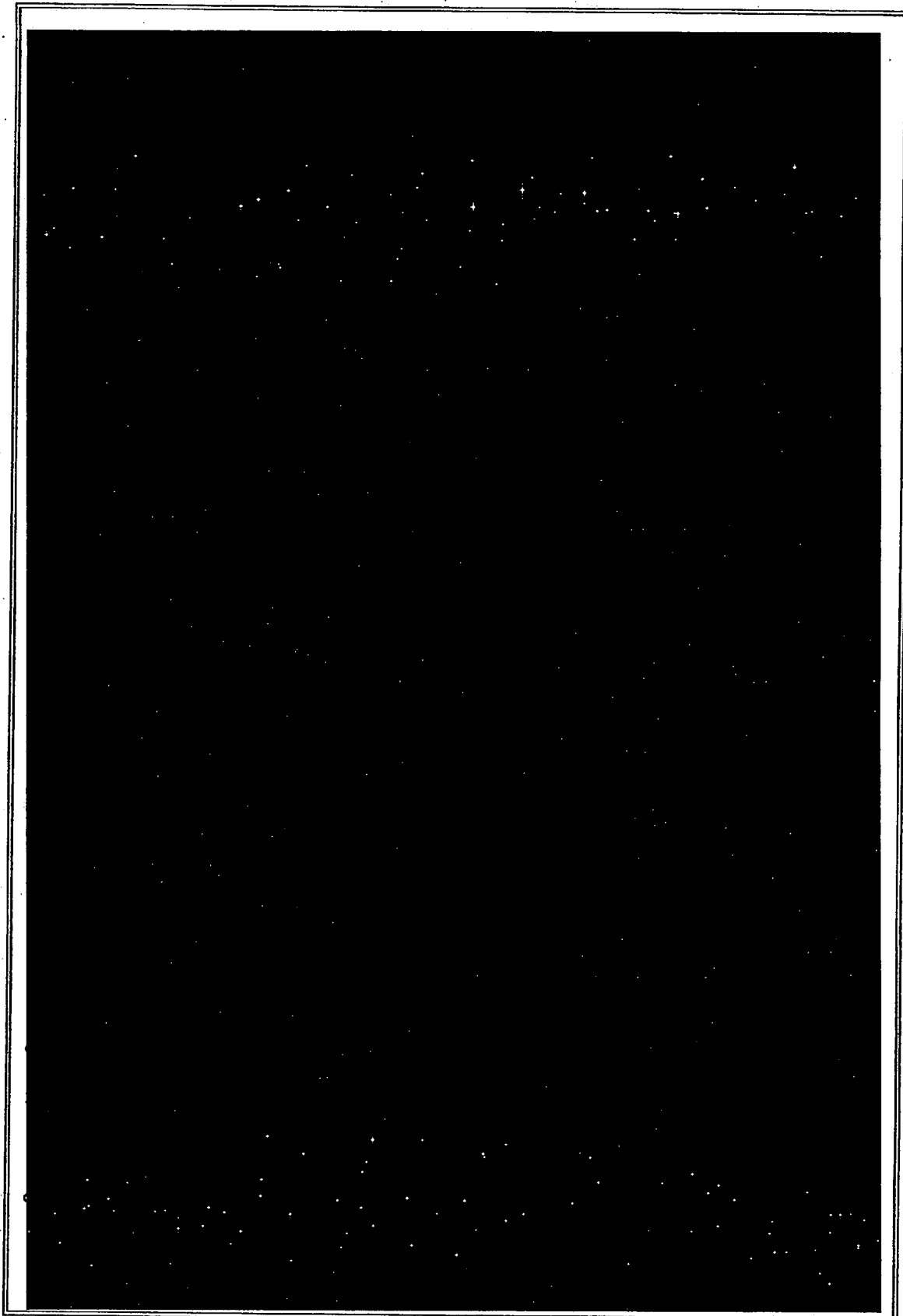
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1 to -- this is extremely confidential. Do we have to seal
2 this deposition?

3 MR. JULANDER: No. In fact, the agreement that
4 we reached with Mr. Robinson was that -- we've got a
5 specific agreement on highly confidential documents.
6 This one has actually been marked "confidential" by
7 Century-Board. So if you wanted to mark it
8 "confidential," we could.

9 MR. TREMBLAY: No. I just assume you know what
10 the agreement is with Bob, and I was just kind of raising
11 it as an issue, and you're fine.

12 MR. JULANDER: No problem.

13 BY MR. JULANDER:

14 Q All right. Dr. Shutov, does this document
15 actually restate the process that you were going through
16 for Century Products as of March 12, 2004?

17 A Yes, sir.

18 Q As you sit here today, do you recall omitting
19 anything that you were doing for Century Products from
20 this report that was relative to what you were trying to
21 communicate to Ameren? Did you leave anything out of
22 this report to Ameren that you recall?

23 A I don't think so.

24 Q In March of 2004, did you understand that the
25 formulation -- formulations that you were working with

1 were confidential to Century Products?

2 A Yes, sir.

3 Q Did you have any understanding that the
4 formulations that you were working on were confidential
5 in any way to Century-Board?

6 A Say it again.

7 MR. JULANDER: Can you repeat that back?

8 (Record read.)

9 MR. TREMBLAY: Vague and ambiguous.

10 THE WITNESS: It seems Century-Board
11 shouldn't -- should not know about the formula? Is that
12 the same question?

13 BY MR. JULANDER:

14 Q Yeah -- no. I think that's a fair response.

15 When you came to Century Products in November of
16 2004, did you understand that you were working with
17 the -- at least foundationally, with what's been called
18 the Century-Board process?

19 MR. TREMBLAY: Well, I'm going to object. That
20 is argumentative and vague and ambiguous.

21 THE WITNESS: No. I was told during my very
22 first calls from Mr. Taylor that they bought license and
23 process of Century-Boards and that doesn't work, they're
24 not able to produce commercial product.

25 ///

1 BY MR. JULANDER:

2 Q And this was in November 2004, you're talking
3 about?

4 A 3, 3.

5 Q I'm sorry. 2003; correct? Yes?

6 A Yes.

7 Q And did you understand that the formulations
8 that you had -- that you were using, and as the
9 consultant from -- in November of 2003, were those
10 formulations that weren't working from Century-Board?

11 MR. TREMBLAY: Well, assumes a fact not in
12 evidence, "were using."

13 THE WITNESS: Please rephrase.

14 BY MR. JULANDER:

15 Q Yeah. As a consultant, you were working on
16 certain formulations. You were trying to improve the
17 formulations; right?

18 A Yes, sir.

19 Q And the formulations that you were trying to
20 improve -- did you understand that those were the
21 licensed formulations from Century-Board?

22 A What I knew from Mr. Taylor, that whatever they
23 bought as license didn't work. I have to make a new
24 formulation, what I knew for sure.

25 Q And what you were working on in November and

1 December was the licensed formulation that wasn't
2 working; is that correct?

3 MR. TREMBLAY: Assumes facts not in evidence and
4 is argumentative, misstates his testimony.

5 I think he's telling you he never was working on
6 the formulation that was --

7 MR. JULANDER: Well, we're going to find out.

8 MR. TREMBLAY: Well, that's what he keeps
9 telling you.

10 MR. JULANDER: I know, but I need to get his
11 testimony.

12 MR. TREMBLAY: I know what you do, and that's
13 why it's argumentative.

14 MR. JULANDER: Put your objections on the
15 record, Don. I'm sorry, it comes to a point where you go
16 past an objection. You go into a speaking objection, and
17 it becomes coaching. I would appreciate it --

18 MR. TREMBLAY: I can do whatever I want to do in
19 this deposition --

20 MR. JULANDER: Well, I would appreciate it if
21 you would put your objections on the record.

22 MR. TREMBLAY: I have. And I'm not coaching the
23 witness. Don't make an innuendo that I am. I'm making
24 my objection. And the third time you ask the same type
25 of question to trick him is when I'm going to tell you

1 what's wrong with your question. Because that's my duty
2 as an officer of the court, is to try to explain to you
3 why you keep making the same objectionable error. That's
4 all I'm doing. I'm not making a speaking objection. I'm
5 duty-bound to tell you these things under ethics. That's
6 what I'm doing.

7 MR. JULANDER: Okay. Let's be real clear,
8 Counsel. There is nothing that I am doing in any way to
9 try and trick this witness. He's far smarter than I am
10 with respect to everything we're dealing with here. My
11 problem is trying to communicate with this witness on a
12 language level. That has nothing to do with tricking
13 anybody. And what I don't appreciate is when I'm trying
14 to deal with his language, you are trying to coach him.
15 In essence, you're trying to suggest to him the language
16 that you want him to testify to. And that's what I'm not
17 appreciating. What I need is just straightforward
18 answers to straightforward questions. There's a language
19 barrier that I'm trying to overcome.

20 Can you appreciate that and just please put
21 objections on the record without speaking objections?
22 That's all I ask, and that's a fair request. And I'll
23 honor that same request when you're taking depositions.

24 MR. TREMBLAY: Now, do I get to make the same
25 kind of speeches you've just made?

1 MR. JULANDER: Counsel, if you want to waste
2 some time, you certainly may.

3 MR. TREMBLAY: No, I don't need to. But I'm
4 just wondering if it cuts both ways.

5 MR. JULANDER: I think you just made your
6 speech.

7 MR. TREMBLAY: Well, you did this with
8 Mr. Robinson also in your depositions, and you don't
9 allow counsel to explain the objection.

10 MR. JULANDER: True.

11 MR. TREMBLAY: And you want to explain as much
12 as you want to.

13 MR. JULANDER: No.

14 MR. TREMBLAY: So all I'm saying to you is, you
15 have a flaw in your question. I attempt to identify the
16 flaws. That's what I attempt to do. I have not coached
17 him.

18 But when you consistently continue with the
19 flaw -- you can read back the record. I never coached
20 him. I never told him what to say. The record speaks
21 for itself.

22 MR. JULANDER: It will speak for itself.

23 MR. TREMBLAY: And so all I'm saying to you is,
24 if you drop out that phrase, you'll get the foundational
25 answer and you can build from there. You choose not to

1 want to; therefore, you're going to continue to get
2 argument, argument, and argument. That's all you want to
3 do.

4 MR. JULANDER: You can object anytime you want.

5 MR. TREMBLAY: I know. I do.

6 MR. JULANDER: Just please, objections without
7 explanation. Then they become speaking objections.

8 MR. TREMBLAY: I can make speaking objections.
9 Everybody can. There's no prohibition against it.

10 MR. JULANDER: Except for one thing --

11 MR. TREMBLAY: You find it in the Code.

12 MR. JULANDER: You are not allowed to make
13 speaking objection in Court --

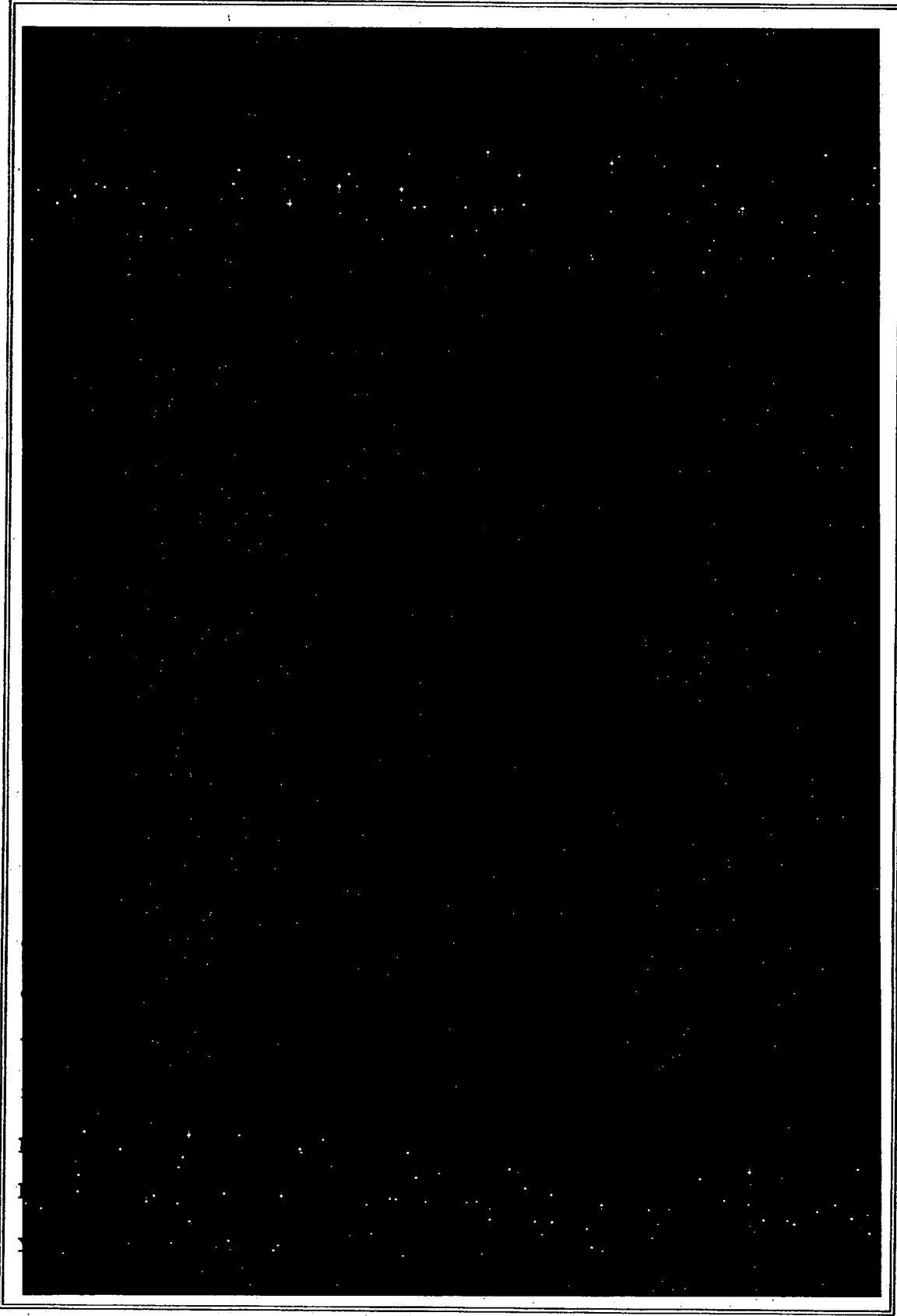
14 MR. TREMBLAY: That's not true. That's a
15 judge's discretion.

16 MR. JULANDER: -- unless you're invited by the
17 Court.

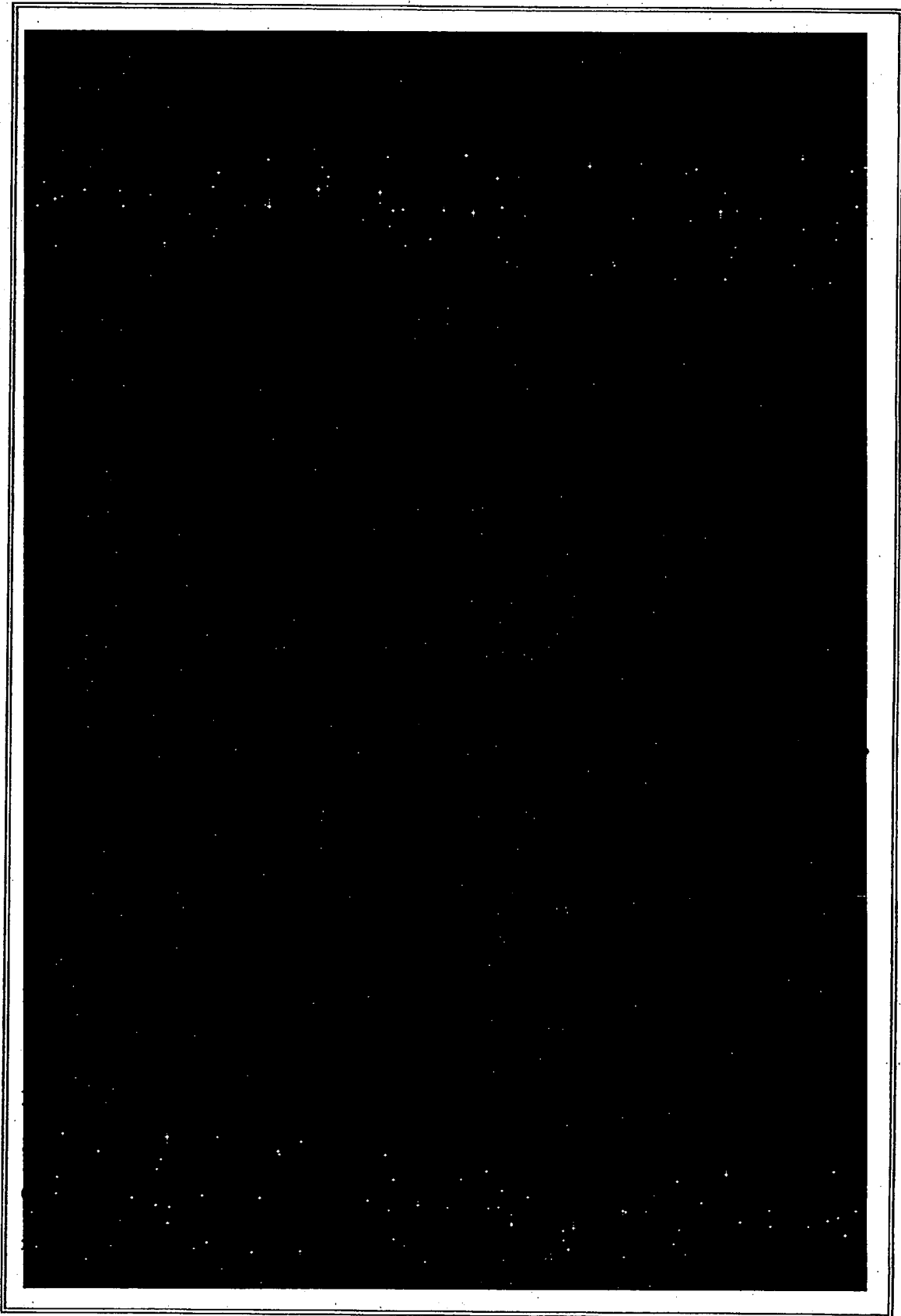
18 MR. TREMBLAY: Well, there you go, Counsel. And
19 you're not the Court, and I get the right -- there's not
20 an objection -- there's no prohibition to a speaking
21 objection in the State of California or in any federal
22 district. I challenge you to provide that to me.
23 There's not. That is a mistake you make.

24 And all I'm telling to you is that as an officer
25 of the court, as a fellow lawyer, I have a duty to

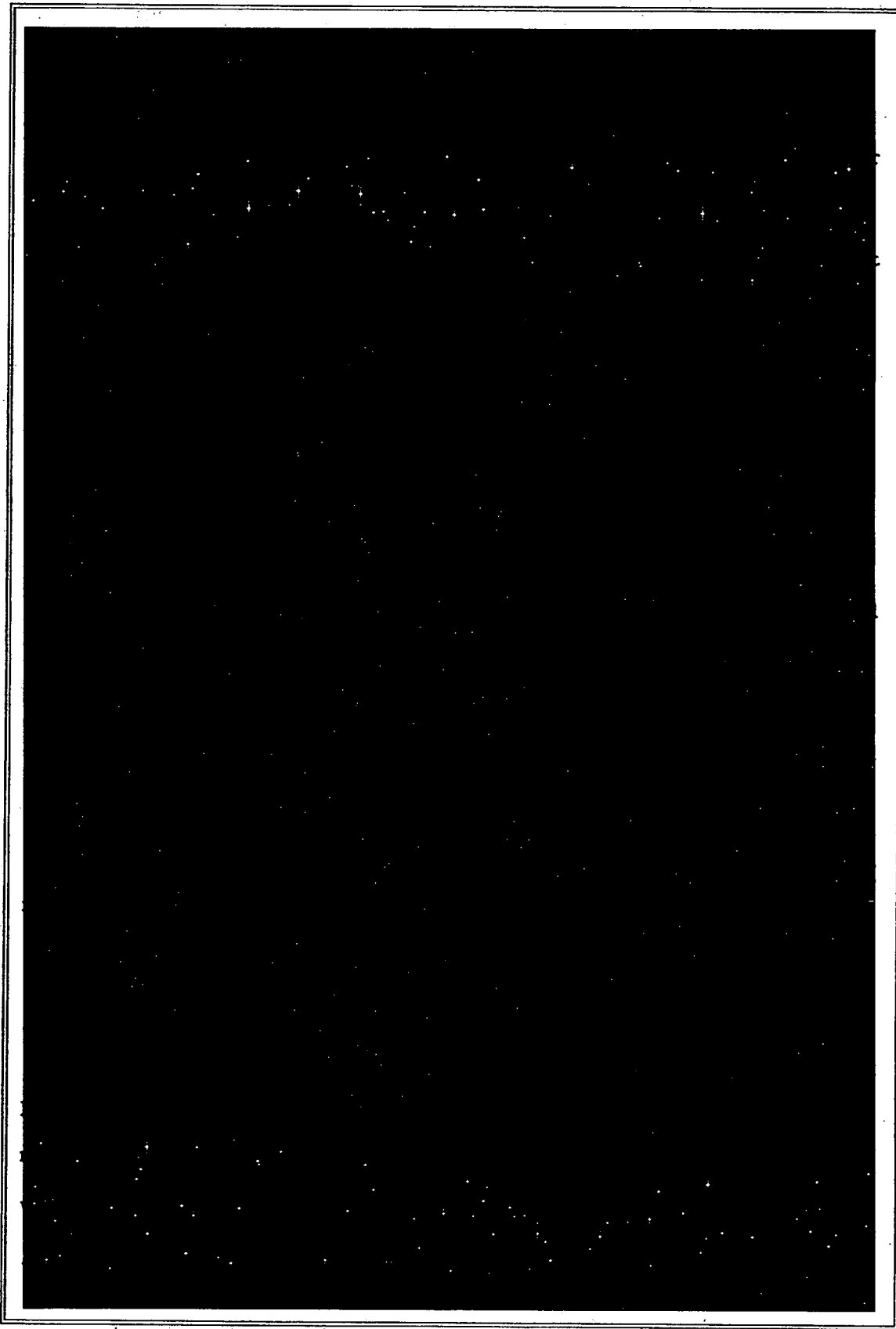
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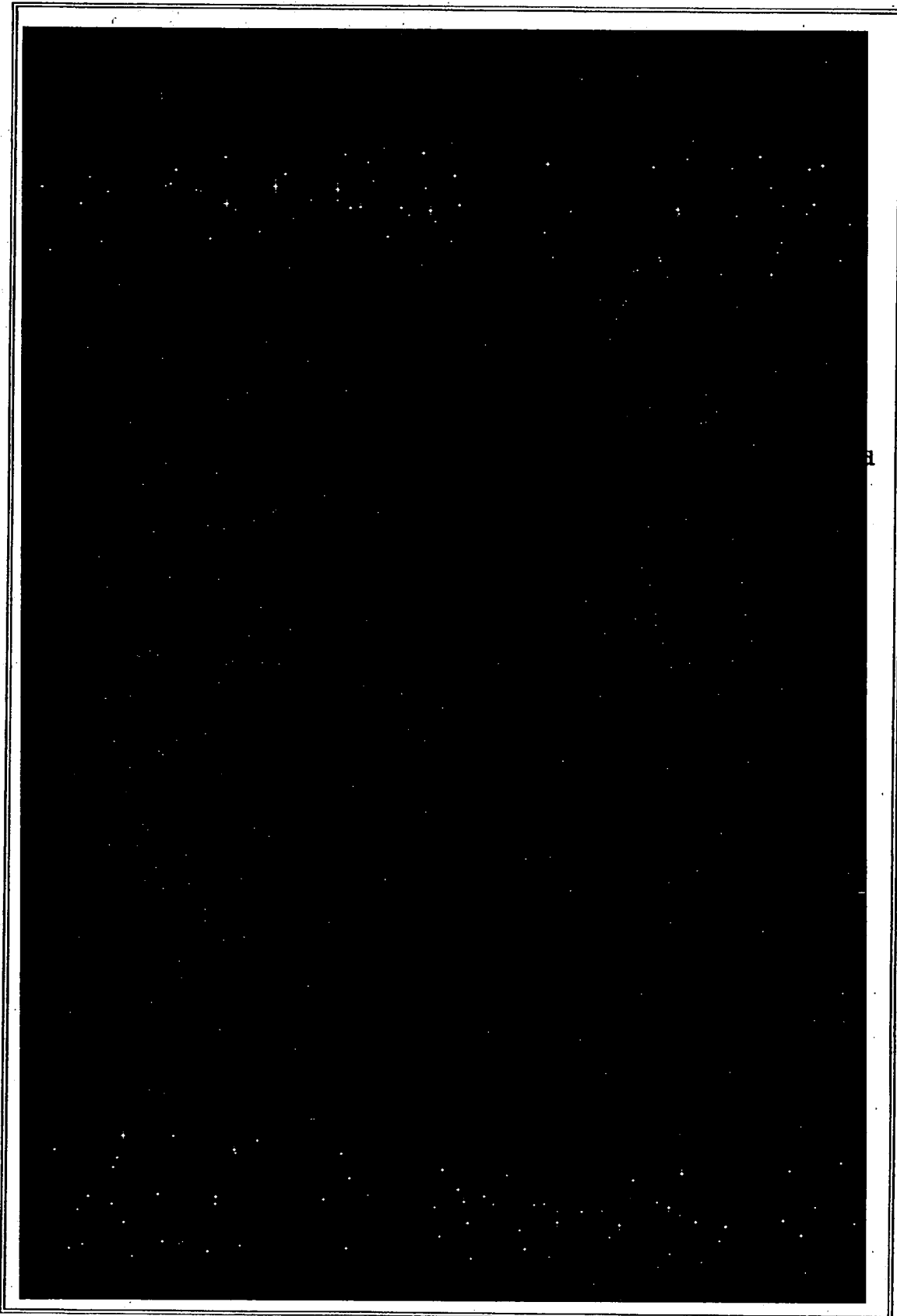
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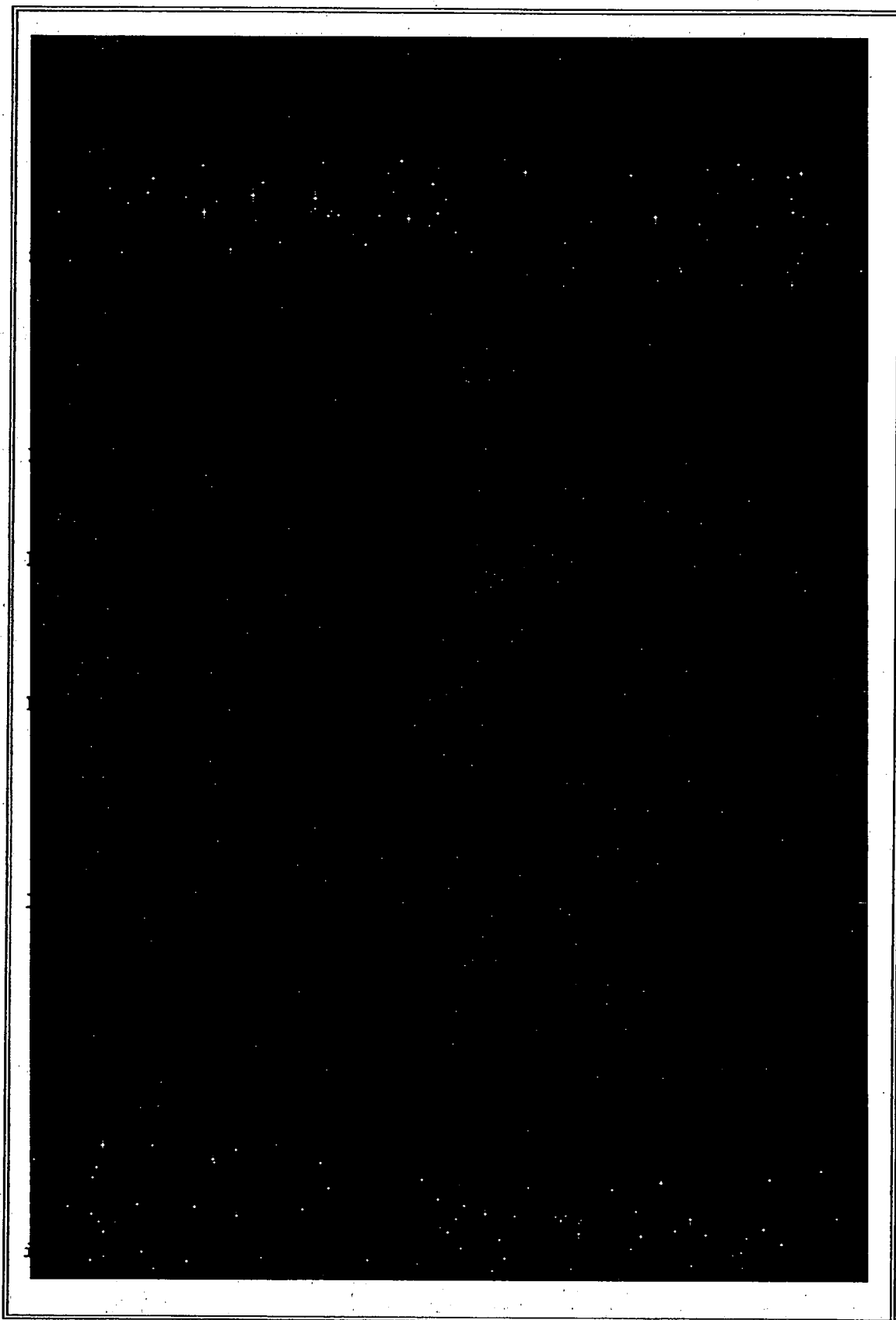
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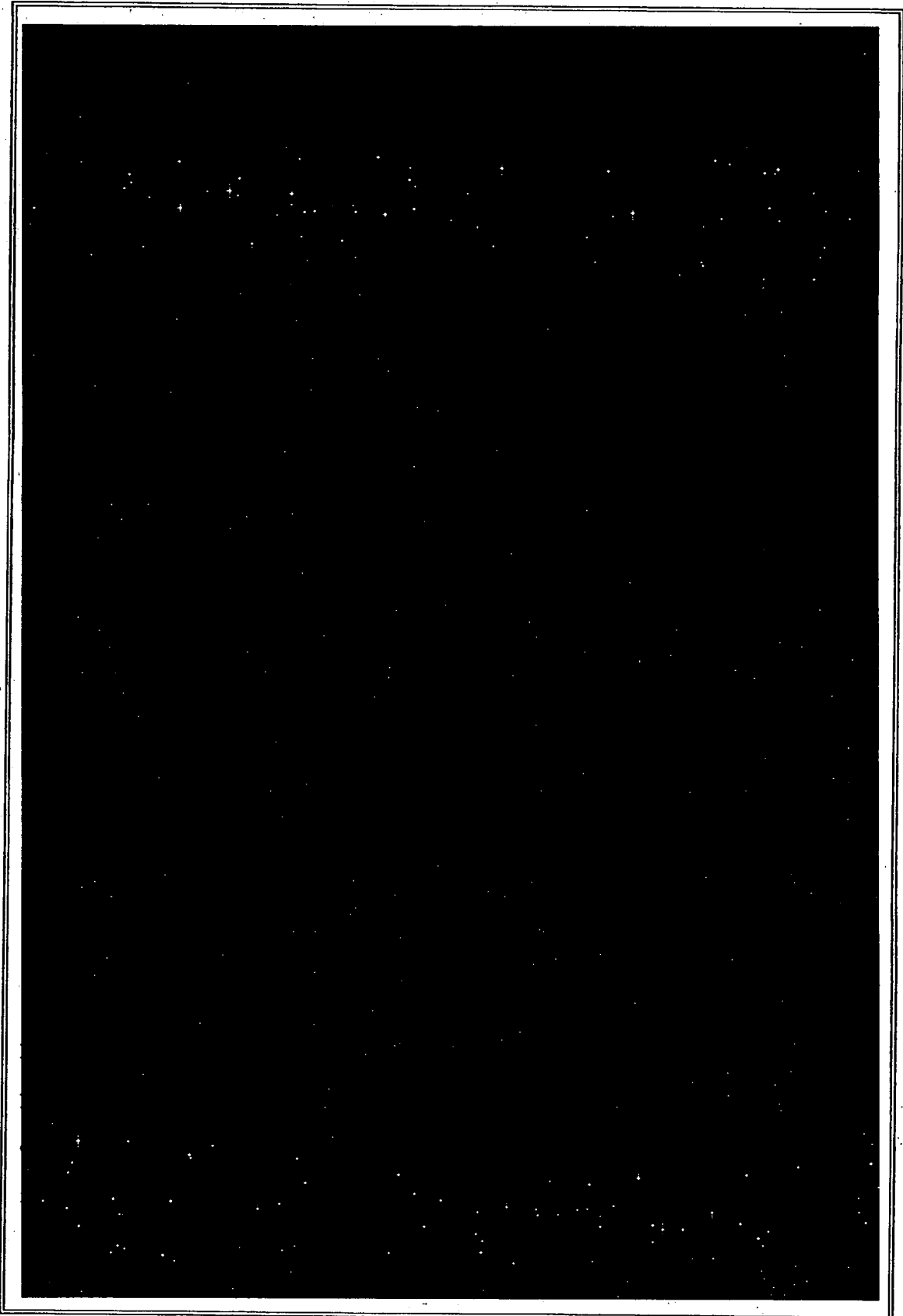
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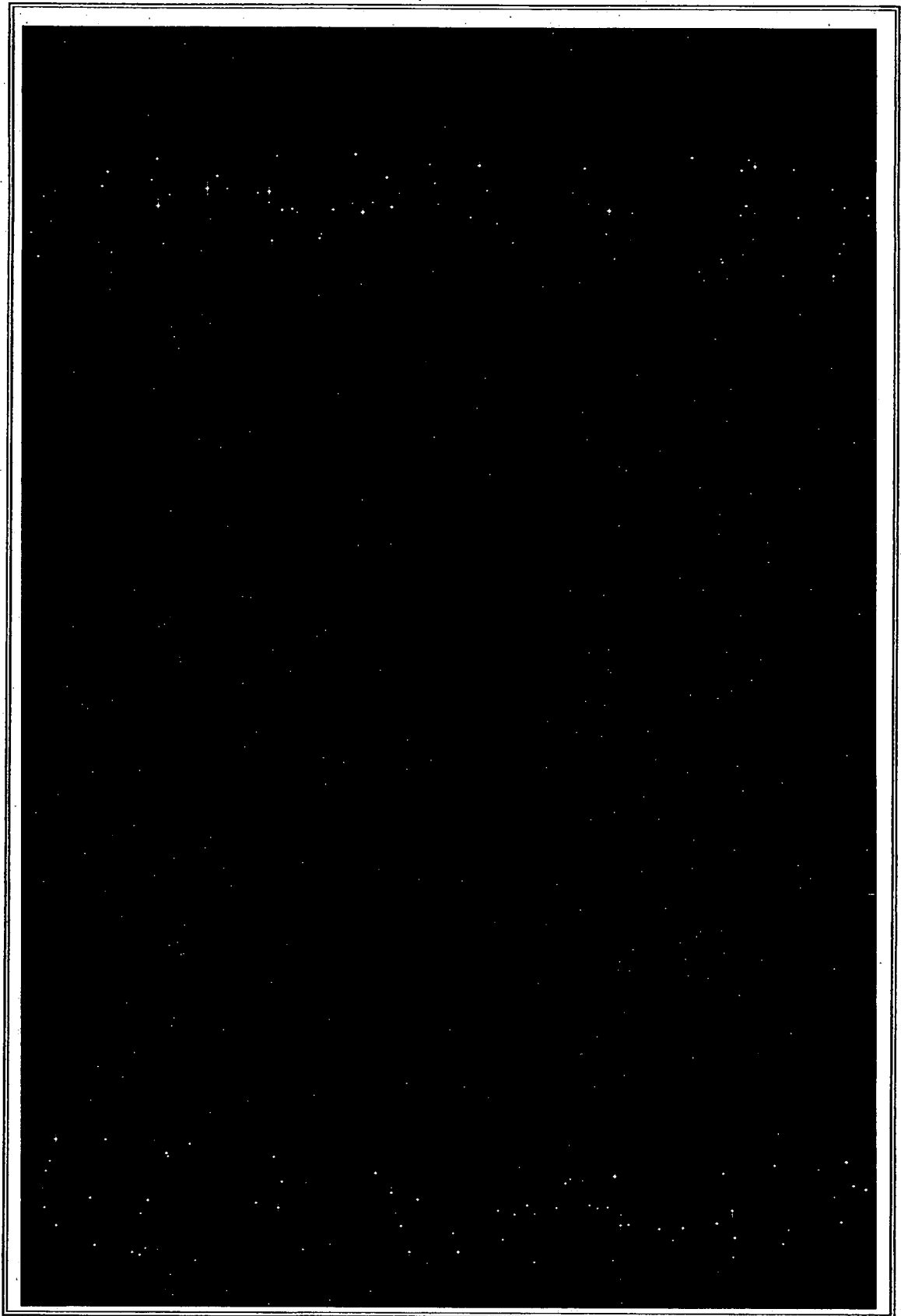
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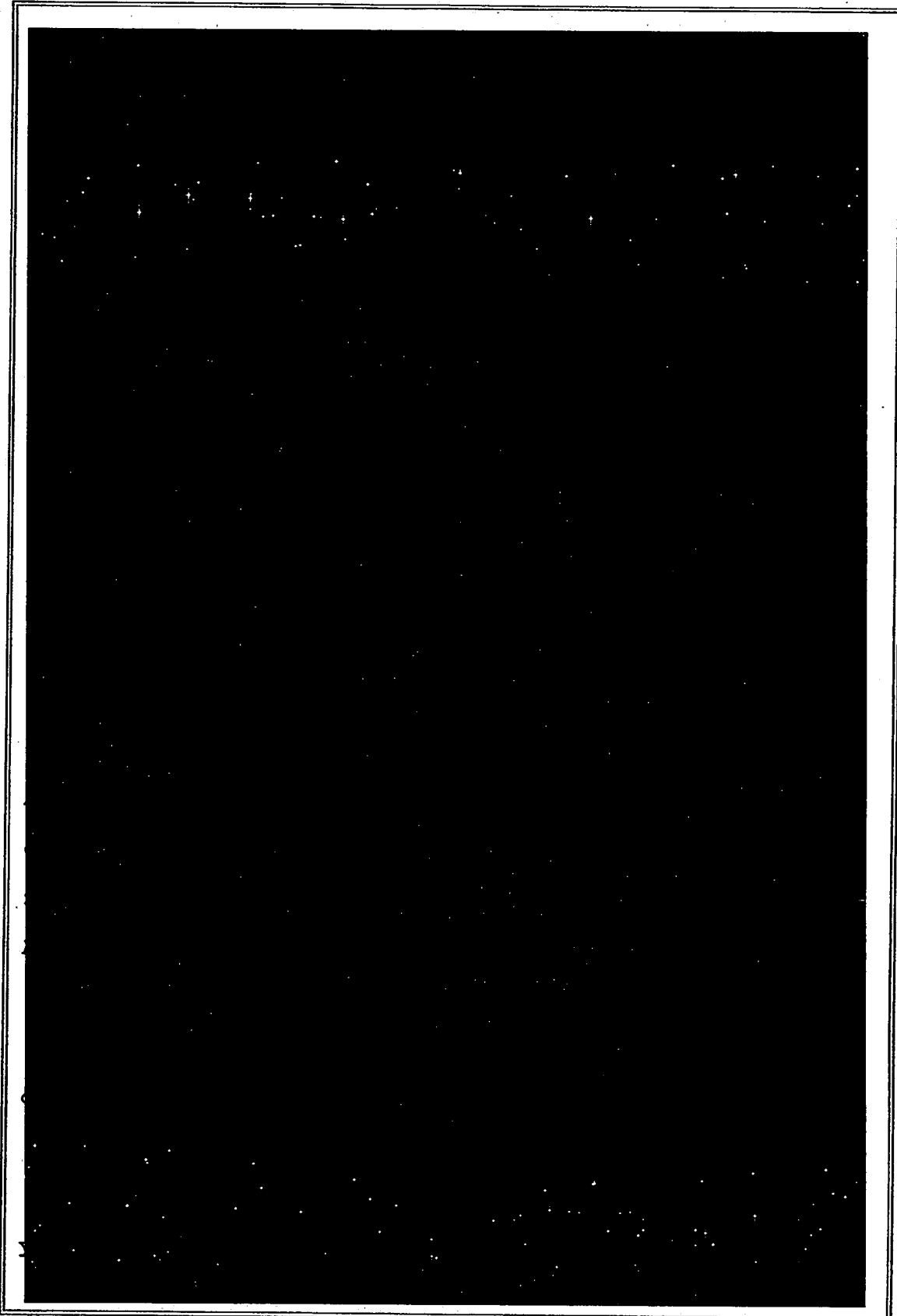
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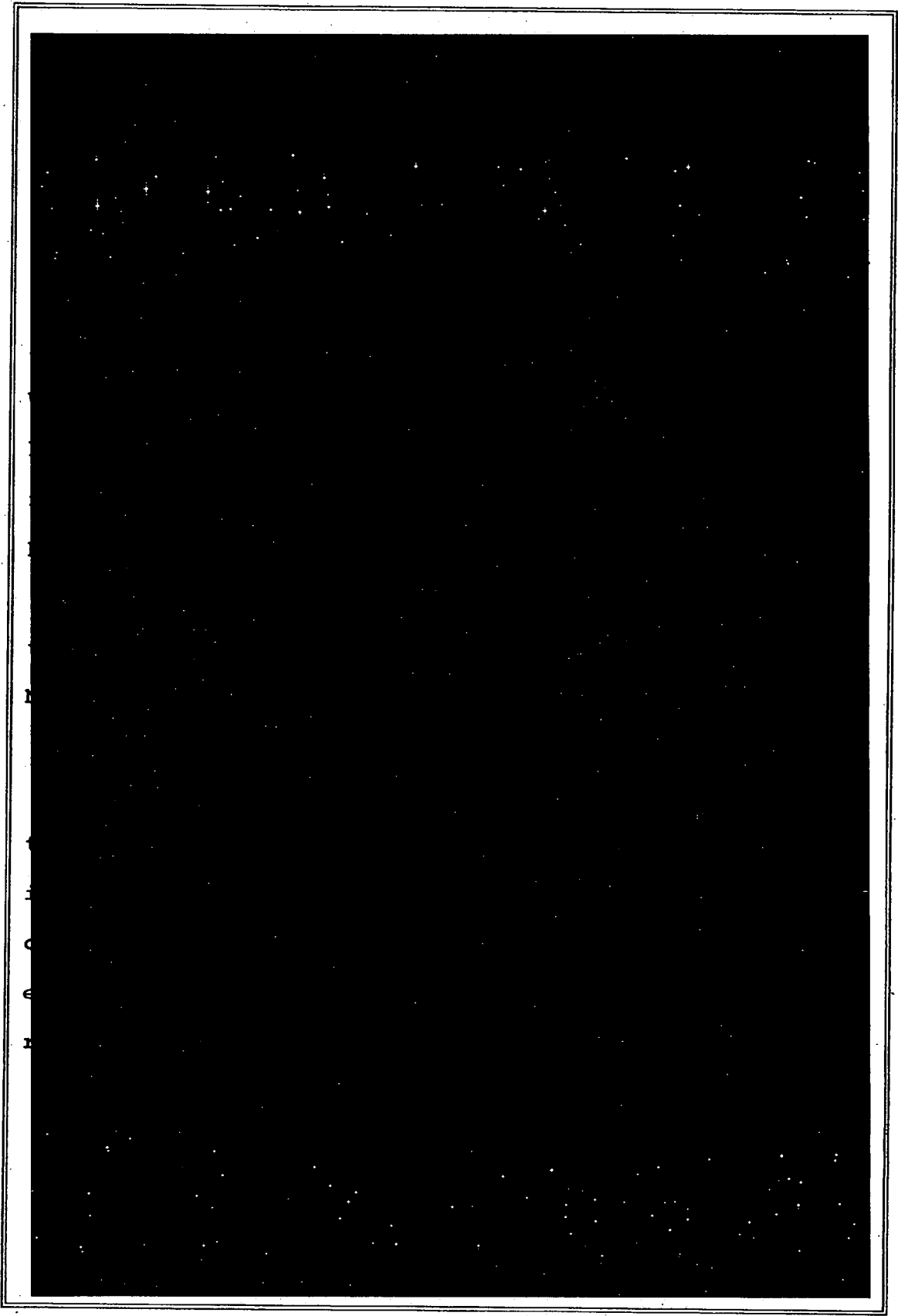
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11 Q Now, with respect to Demilec USA, did you know
12 the people at Demilec?

13 A Yes. I know a person, the president, know.

14 Q You'd worked with him before coming to Century
15 Products?

16 A Yes. We worked with same problem, artificial
17 wood based on polyurethane foam, when I was working as
18 professor at Tennessee Tech University.

19 Q Do I understand that Demilec USA actually made
20 boards from the formulations that you were working on in
21 their offices in Texas?

22 A No.

23 Q That never happened?

24 A No. I don't know. I don't know. And how?
25 They didn't have my formulation. How?

1 Q They didn't make any boards using your -- using
2 their own polyols?

3 A Yes. They use their own polyols. What they
4 made for me -- they made for me samples of unfoamed,
5 unfilled pieces of polyurethane, you know, just to --
6 just because also I requested them to resolve the
7 problem -- to help me resolve the problem with
8 scratching. They made in their labs a known recipe for
9 me, pieces, small pieces unknown, unfilled recipes. They
10 didn't provide me the recipe.

11 Q You're talking about the recipe just of the two
12 polyols?

13 A Maybe three, maybe four. As all companies, they
14 didn't tell me how many polyols, what kind of polyols.

15 MR. TREMBLAY: Belated objection of speculation.
16 BY MR. JULANDER:

17 Q Dr. Shutov, I'm going to hand you another
18 document which I'm going to mark as Exhibit 12. For the
19 record, Exhibit 12 is a letter dated July 2, 2004 to
20 Mr. Wade Brown in care of my office. It's purportedly
21 signed by a John Taylor.

22 (Exhibit No. 12 marked for identification.)

23 MR. TREMBLAY: Do you want him to read it?

24 MR. JULANDER: Yeah.

25 ///

1 BY MR. JULANDER:

2 Q Please review it if you'd like to familiarize
3 yourself with the document.

4 A Yes, I read.

5 Q Dr. Shutov, in reading Paragraphs 1 through 10,
6 what do you understand those -- these paragraphs are
7 trying to establish or communicate?

8 MR. TREMBLAY: Lacks foundation.

9 THE WITNESS: How do I understand?

10 BY MR. JULANDER:

11 Q Yes.

12 A I understand Mr. Taylor -- he described the main
13 developments which have been made at Century Products.

14 Q And developments of what?

15 MR. TREMBLAY: Document speaks for itself.

16 THE WITNESS: In terms of formulations, in terms
17 of equipment processing parameters, any kind of fillers.

18 BY MR. JULANDER:

19 Q Now, let's be clear. Paragraphs numbered 1
20 through 10 --

21 A Yes.

22 Q -- these are much of what you've been talking
23 about today were developed under your --

24 A Supervision.

25 Q -- direction or supervision at Century Products;

1 is that right?

2 A Let me check. No. 3, it's not mine. No. 5,
3 it's partially mine, mainly by Mr. Butteriss. No. 6, we
4 made together with Mr. Butteriss. NO. 10, partially with
5 Mr. Butteriss. All others are mine.

6 Q Dr. Shutov, if you -- as a scientist in
7 polyurethane chemistry -- were handed this document,
8 okay, our Exhibit No. 12 --

9 A What, No. 12?

10 Q That's this.

11 A Okay.

12 Q If you were just handed this document, No. 12
13 alone --

14 A If I just look at?

15 Q Yes. And you had no other background at all
16 with Century Products or with what was happening at
17 Century Products, do you -- let me withdraw that, ask it
18 a different way?

19 Before you came to Century Products -- okay? I
20 want you to go back and think in your mind what your
21 state of knowledge and understanding was in the urethane
22 industry; okay? At that point in time, if you had been
23 handed Exhibit 12, do you think you could create the same
24 plastic lumber that Century Products was creating in July
25 of 2004?

1 MR. TREMBLAY: Okay. It's an improper
2 hypothetical and assumes fact not in evidence.

3 Do you understand what he's asking you to do?

4 THE WITNESS: No, no.

5 MR. TREMBLAY: Okay. Don't answer the question,
6 then.

7 BY MR. JULANDER:

8 Q Let me be clearer --

9 MR. TREMBLAY: Okay. He's not here to answer
10 hypotheticals. I hope you know that. And I'm going to
11 instruct him not to answer hypotheticals that are not
12 properly based. I'm not trying to give you a speaking
13 objection. If you make a complete hypothetical, I'll
14 probably let him answer it. But if it's incomplete, he
15 ain't answering it. He's a percipient witness. He
16 happens to be an expert, but he's a percipient witness.
17 We have designated experts.

18 BY MR. JULANDER:

19 Q Dr. Shutov, do you understand that Century
20 Products, by this Exhibit 12, is trying to communicate a
21 complete formulation for making plastic lumber from
22 polyurethanes?

23 MR. TREMBLAY: Don't necessarily adopt his --
24 did you understand that? Have you seen this document
25 before?

1 THE WITNESS: I don't think so.

2 MR. TREMBLAY: Okay.

3 BY MR. JULANDER:

4 Q My question is different. My question is, as
5 you read that document and as you see paragraph numbers 1
6 through 10, do you understand what those paragraph
7 numbers 1 through 10 are saying?

8 MR. TREMBLAY: Well, the document speaks for
9 itself.

10 Do you understand 1 through 10? Do you
11 understand the English?

12 THE WITNESS: Yes, I do understand.

13 BY MR. JULANDER:

14 Q And with the exception of Item No. 3, you were
15 actually personally involved in the work that is stated
16 here in Items 1 through 10; right?

17 A Yes.

18 Q Okay. Is it your understanding that if you take
19 the entirety of Items 1 through 10, that that is
20 attempting in any way to communicate an entire and
21 complete formulation for making plastic lumber?

22 MR. TREMBLAY: Okay. I'm going to object to the
23 answer as to what the intent of the document is. That's
24 what you're asking him in the context of that question.
25 The document speaks for itself. You have not laid a

1 foundation that he ever was involved in the document or
2 drafted the document. In fact, he's told you he didn't
3 see the document. So are you asking him today as he
4 reads the document, is that an opinion he has?

5 MR. JULANDER: Essentially.

6 MR. TREMBLAY: All right. He's not testifying
7 to opinion testimony. I'll instruct him not to answer as
8 to the opinion testimony, as framed as to this particular
9 document's intent; okay?

10 Rephrase it, and I think you can get where you
11 want to go.

12 BY MR. JULANDER:

13 Q Dr. Shutov, just simply looking at Paragraphs 1
14 through 10 --

15 A Yes.

16 Q -- does that amount to a complete formulation of
17 plastic lumber similar to what Century Products was
18 producing in July of 2004?

19 MR. TREMBLAY: You may answer that question if
20 you know.

21 MR. JULANDER: Let me have her read it back.

22 THE WITNESS: I lost my way. Please repeat.

23 (Record read.)

24 MR. TREMBLAY: Vague and ambiguous.

25 But you may answer to the best ability that you

1 can.

2 THE WITNESS: What I can say, you said that is a
3 formulation. There is no formulation here. Formulation
4 means blend of chemicals.

5 MR. TREMBLAY: You've answered the question.
6 Let him rephrase the question. I think he understands
7 the mistake now.

8 Does 1 through 10 identify what the Century
9 process was that was being used on July 2nd, 2004 to the
10 best of your knowledge?

11 THE WITNESS: It describes --

12 BY MR. JULANDER:

13 Q Sure. You can answer that question.

14 A It describes, using very general words, you
15 know.

16 Q Does it describe it sufficiently enough to do
17 what is -- to produce plastic lumber?

18 A No.

19 Q What's missing?

20 A Everything, you know, in terms of chemistry,
21 type of chemical reactivity, molecule weight, reactivity,
22 type of extruder, type of forming unit, type of glass,
23 type of ash. It just bullets.

24 Q For example, Dr. Shutov --

25 MR. TREMBLAY: I think you got your record.

1 Everything else you could ask him is legal conclusion.

2 But go ahead. I mean, it's your time.

3 BY MR. JULANDER:

4 Q Looking at Paragraphs 1 through 10, Dr. Shutov,
5 do the paragraphs that you were personally involved in,
6 in other words, excluding Paragraph 3 --

7 A Yes.

8 Q -- do these paragraphs amount to changes to the
9 licensed process that you received?

10 MR. TREMBLAY: What you want to call the
11 Century-Board licensed process?

12 MR. JULANDER: Yeah.

13 BY MR. JULANDER:

14 Q The licensed process that you received back in
15 November of 2003.

16 A I never read. I never saw the license
17 agreement.

18 Q I'm not asking you about the license agreement.
19 I'm asking you about the process, the technology that was
20 conveyed under the license that you were working with in
21 November or December of 2003; right? We've already
22 talked about that.

23 A Yes.

24 Q And if we're looking at Paragraphs 1 through 10?

25 MR. TREMBLAY: Are they different?

1 BY MR. JULANDER:

2 Q These items, do these amount to changes that
3 were made to the licensed process?

4 MR. TREMBLAY: Objection. Argumentative.

5 THE WITNESS: I ask you a question in terms of
6 to understand better what you are saying. You ask me,
7 did I find here something you comparing which I found
8 which when I started to work as a consultant for company?

9 MR. TREMBLAY: Why don't you ask him if they're
10 different.

11 BY MR. JULANDER:

12 Q Well, my question isn't different, per se.
13 It's -- are the items in Paragraphs 1 through 10 --
14 again, excluding No. 3 -- are these changes to --
15 additions or modifications or changes to the licensed
16 process you received in November of 2003?

17 MR. TREMBLAY: Okay. That's argumentative, and
18 you're assuming a fact not in evidence that he's
19 previously already testified about.

20 THE WITNESS: I don't understand your term,
21 "licensed process." I do understand what I found when I
22 visited the company the very first time when I find --
23 what I found in terms of chemical formulation, processing
24 parameters, equipment.

25 MR. TREMBLAY: Okay. Let's call that, for

1 purposes of today, the Century-Board information. Is
2 that fair?

3 MR. JULANDER: Sure.

4 MR. TREMBLAY: Okay. What you found when you
5 came to Century Products.

6 THE WITNESS: I never seen Century-Board
7 technology.

8 MR. TREMBLAY: Right. But let's just call it
9 that.

10 BY MR. JULANDER:

11 Q In other words, what we're asking you to do is
12 to just put a name, and a licensed process is fine too.

13 MR. TREMBLAY: Well, he's having a problem with
14 it. That's why I was just changing it.

15 BY MR. JULANDER:

16 Q So when you came to Century Products, I know you
17 don't know where everything came from. You were just
18 handed some technology; right?

19 A (No audible response.)

20 MR. TREMBLAY: Is that a "yes"?

21 THE WITNESS: Yes.

22 BY MR. JULANDER:

23 Q And the technology that you were handed to work
24 with -- we want you to refer to that as the Century-Board
25 licensed process.

1 MR. TREMBLAY: That's the problem. He's never
2 testified he worked with it.

3 MR. JULANDER: Oh, I think he has.

4 MR. TREMBLAY: No, he has not. It is clearly in
5 the record. And that's what you keep --

6 THE WITNESS: I'm able to answer to your
7 question if you accept my terminology. Whatever I found
8 when I visited the company the very first time, you can
9 call it Century-Board or XYZ technology. Doesn't matter.
10 If you accept my first formulation, did I find something
11 new here, something different or new comparing with what
12 I found in November 2003?

13 MR. TREMBLAY: Referring to Exhibit 12.

14 BY MR. JULANDER:

15 Q Right.

16 A Yes. It's absolutely new process in any sense,
17 in terms of chemicals, in terms of liquid chemicals,
18 solid chemicals, processes, fillers, and screw design and
19 so on.

20 MR. TREMBLAY: Referring to Exhibit 12.

21 BY MR. JULANDER:

22 Q I'm not arguing with you about that at all. I'm
23 just trying to understand, Dr. Shutov. When you came to
24 Century Products in 2003, you didn't bring with you a
25 preconceived formulation for making plastic lumber using

1 the polyurethane chemicals that are used in -- by Century
2 Products; right?

3 MR. TREMBLAY: Asked and answered.

4 THE WITNESS: You have to say polyurethane and
5 ash and everything; yes?

6 BY MR. JULANDER:

7 Q Yes, the same formulation that Century Products
8 was using.

9 A No, I didn't bring with me.

10 Q You brought with you your knowledge about
11 chemistry, chemical engineering, knowledge about
12 polyurethanes engineering; right?

13 A Not exactly. Because I told you maybe last time
14 that the problem to make commercial available boards
15 consists of several packages, you know -- chemistry,
16 equipment, solid filler, liquid filler, ash, and so on.
17 And I have deep knowledge until developments in all of
18 these ten packages. But all together, they are combined
19 with this technology. So different chapters or -- how to
20 say -- packages, I knew for sure, and you can find here.

21 But all together, I didn't work -- but it's
22 not -- how to say -- this job to make a new product,
23 which I -- when I started to work, didn't request much
24 creativity for me because the most initial stage of this
25 project, chemistry. It's a trivial chemistry, and I'm

1 surprised it wasn't resolved.

2 MR. TREMBLAY: Trivial chemistry?

3 THE WITNESS: Trivial. And it wasn't resolved.

4 You know, the project has several levels of
5 complicity, you know? The simplest level is chemistry,
6 which is a textbook, believe me -- and equipment,
7 textbook. When you are talking about polymer physics,
8 filling, forming, it's much more complex -- and similar
9 structure and so on.

10 My predecessor didn't pass through, the very
11 zero -- how to say -- not "zero," it's bad word --
12 initial level to use textbook chemistry how to make
13 polyurethane foam. And that is the reason why he wasn't
14 successful.

15 MR. TREMBLAY: Let the record reflect that "you
16 can find here," as referred to by the witness in his
17 testimony just given, was in reference to the
18 publications that he's brought today.

19 THE WITNESS: Yes.

20 BY MR. JULANDER:

21 Q Dr. Shutov, the first problem that you were
22 asked to solve was wet spots on the boards; right?

23 A Yes, sir.

24 Q You weren't asked to create a whole new
25 chemistry and start from scratch; right?

1 MR. TREMBLAY: Excuse me. Misstates the
2 testimony.

3 THE WITNESS: Not what they requested me, to
4 make new chemistry. Mr. Taylor told me several times,
5 "We need to have a product, new product according to the
6 market" -- "market requirements. And whatever you want,
7 you have a lot of freedom. Make it. Because we don't
8 want to work anymore with previous formulations because
9 we spent 3 plus million dollars unsuccessfully" He gave
10 me the term "carte blanche." You understand the term?

11 BY MR. JULANDER:

12 Q The first problem that you were represented as a
13 consultant to solve as wet spots in the board?

14 MR. TREMBLAY: Asked and answered.

15 THE WITNESS: Correct.

16 BY MR. JULANDER:

17 Q And the solution to the wet spots in the board,
18 from your perspective, was to deal with the two polyols
19 that were being presented as part of a formulation
20 Century Products was using; correct?

21 A Yes.

22 MR. TREMBLAY: Misstates the testimony.

23 BY MR. JULANDER:

24 Q And the formulation that Century Products was
25 using was the Century-Board licensed process; right?

1 A I don't know what they're called.

2 Q That's what we've agreed that we're going to
3 call the formulations, the technology that you received
4 in November of 2003; okay?

5 A The technology which I received, yes.

6 Q And that's the -- we're calling that the
7 Century-Board licensed process; okay?

8 A Okay. With some reservations, right.

9 MR. TREMBLAY: Right. Sure. Fine.

10 BY MR. JULANDER:

11 Q Let me understand what your reservations are.

12 A You used the term "Century-Board process." I
13 don't know what that means. But you push me to use this
14 terminology; you understand?

15 Q That's fair. And your counsel agrees.

16 MR. TREMBLAY: The problem is you're talking
17 about something. He doesn't know what you're talking
18 about. He hasn't seen that plan. So therefore, he
19 doesn't know what you're talking about.

20 BY MR. JULANDER:

21 Q Now, we're agreeing to call the formulation, the
22 technology that you received in November of 2003, the
23 Century-Board licensed process; okay?

24 A Okay.

25 Q Now, you were asked to solve a problem with the

1 boards that were being made with that Century-Board
2 licensed process; correct?

3 A Yes.

4 Q The boards had wet spots, and they wanted you to
5 help them change that as the most important problem at
6 that time; right?

7 A No, no.

8 MR. TREMBLAY: Mischaracterizes testimony.

9 BY MR. JULANDER:

10 Q Okay. What part of that is inaccurate?

11 A The main problem was the boards are too brittle,
12 and they are too heavy. And I haven't seen that time any
13 samples. In a week, they sent me the samples. And when
14 I saw the wet spots, I told them one of the reason of the
15 brittleness is wet spots because it reflects that the
16 second polyol doesn't work. It did not include in the
17 chemical structure; okay? So not the wet spot was a
18 challenge; to decrease the brittleness -- how to say --
19 brittleness. And related with brittleness was high
20 density.

21 I explain you something. When I visited the
22 company very first time, they show me typical Wade's
23 board. We call this test as a joke, John Taylor test.
24 Two guys take a 16-foot board, one end, second end, and
25 drop from this distance on the concrete floor. Debris,

1 brittleness. "Brittleness" in technical term is related
2 with -- they use "brittleness." I use "flex strength."
3 If you have the same but low density, it's maybe okay.
4 Because why brittleness happens, brittle material drops
5 under the weight that -- its own weight and produce
6 debris. If you decrease the density, the weight will be
7 decreased, and maybe you didn't break.

8 So again, wet spot, from my perception by phone,
9 was the reason of brittleness. And then I started to
10 work with brittleness when I visited the company --
11 immediately related with brittleness to decrease the
12 density. And you present -- you do remember here, more
13 density. It's interrelate.

14 BY MR. JULANDER:

15 Q And so what you did was you changed the ratios
16 of the two polyols -- you reversed the ratios of the two
17 polyols, and you introduced a polyol that you felt had a
18 better curing time relative to the first polyol?

19 A Vice versa, no. Sequence is different. First I
20 changed the polyol, and Wade started to use the same
21 ratio as he used to use. I told him it's wrong. And
22 maybe I didn't tell him. I ask him why he's using. He
23 says that's his formulation, means the ratio. So first I
24 found the new polyol; and second, I change the ratio. I
25 found, and I changed.

1 Q And in doing that, you are saying you created a
2 whole new product; is that right?

3 A Yes, sir.

4 MR. TREMBLAY: Could we take a short break?
5 We've been going for an hour.

6 MR. JULANDER: Sure.

7 (Recess.)

8 BY MR. JULANDER:

9 Q Dr. Shutov, do you disagree that you are
10 changing the two polyols, changing from one to a more --
11 a different polyol that had a closer curing time -- do
12 you disagree that that was an improvement over the
13 original product or formulation?

14 A It's a new formulation.

15 Q Yes. But do you disagree that that was an
16 improvement over the original?

17 A I disagree. It wasn't improvement. It has
18 developed a new formulation with different polyol and
19 absolutely new formulation. Two features make it
20 different.

21 Q Would you agree that that change that you made
22 in the polyols was derived from your understanding of the
23 Century-Board licensed process?

24 A No.

25 Q Not in any way?

1 A No. Because again, I don't know what does it
2 mean, the process. And essential to add that I made this
3 conclusion when I've never visited Anaheim. I saw just
4 samples with magnification -- how to say -- magnification
5 glass and scratching and so on.

6 Can I take a water?

7 Q Certainly. Would you like a cold water?

8 A No, no.

9 Q Would you agree, Dr. Shutov, that the change
10 that you made in the polyols in November, December of
11 2003 -- other than the polyols themselves -- incorporated
12 the Century-Board licensed process as we've given you
13 what it is today?

14 MR. TREMBLAY: Argumentative.

15 THE WITNESS: I totally didn't understand your
16 question.

17 BY MR. JULANDER:

18 Q Sure. Would you agree that the change that you
19 made to the polyols, and the new product that you created
20 from that change, incorporated the Century-Board licensed
21 process?

22 A Incorporated? What do you mean?

23 Q Including within it the technology that you had
24 already been using.

25 A No.

1 Q Not at all?

2 A No. Because as I said, new product means new
3 formulation, at least one component.

4 Q Sure. But all of the rest of the components had
5 been exactly the same as you had been using; right?

6 MR. TREMBLAY: Assumes fact not in evidence.

7 THE WITNESS: At that time, yes.

8 BY MR. JULANDER:

9 Q So that's what I mean by the new product
10 incorporated all of the rest of the formulation that
11 Century Products had been using at the time.

12 MR. TREMBLAY: Argumentative.

13 THE WITNESS: "Incorporated," it means all other
14 components are the same?

15 BY MR. JULANDER:

16 Q Yes.

17 A Yes.

18 Q And when you change the ratio of the two
19 polyols, you still incorporated all of the other elements
20 of the technology that Century Products had been using up
21 to that point in time; right?

22 A Yes, sir.

23 Q In fact, if we go back and we look at
24 Exhibit 12 -- and this is the July 2nd letter --
25 Paragraphs 1 through 10, with the exclusion for now of

1 Paragraph 3 -- all of the process that is represented by
2 these Paragraphs 1 through 10 also includes in some
3 respects the Century-Board process; right?

4 MR. TREMBLAY: Vague and ambiguous,
5 argumentative, misstates the testimony. Problem is with
6 the word "process."

7 THE WITNESS: All nine items except No. 3 are
8 new ones comparing what I found.

9 BY MR. JULANDER:

10 Q But those nine items do not stand alone, do
11 they? They don't stand alone and make their own formula
12 for plastic lumber; right?

13 MR. TREMBLAY: Vague and ambiguous.

14 THE WITNESS: In order to make the real product,
15 you have to take isocyanate, water, ash, and so on.

16 BY MR. JULANDER:

17 Q Yeah. And so those -- those families of
18 chemicals that were outlined in the Century-Board
19 licensed process still exist in the process that we see
20 here on July 2nd, 2004; right?

21 A Yes.

22 Q And so these items -- 1 through 10, excluding
23 No. 3 -- incorporate that Century-Board licensed process
24 to that extent; right?

25 MR. TREMBLAY: Argumentative and vague and

1 ambiguous to that extent.

2 THE WITNESS: I tell you what. Incorporate
3 other chemicals, not the process. Take a look here.

4 MR. TREMBLAY: Pastries.

5 THE WITNESS: I said it's cookies. Based on
6 continuing of your logics; okay? All these cookies are
7 the same because they consist of the wheat, flower,
8 water, citric acid, and sodium bicarbonate. That, you
9 are trying to convince me. I said yes, they have wheat,
10 flower, water, citric acid, plus something else. And
11 they -- it's different products.

12 Do you understand my -- how to say --
13 exhibition, example?

14 BY MR. JULANDER:

15 Q Sure, absolutely.

16 A So hundred thousand cookies using the same
17 families but major or minor additives completely change
18 the product, not application, application. Something for
19 diabetics, something for kids, something for --

20 Q Dr. Shutov, let's be clear. And that is the
21 Century-Board licensed process. The point of that was to
22 produce -- at the time in 2003, was to produce decking
23 lumber; correct? That was the goal?

24 A The goal, yes.

25 Q And that same goal -- Century Products had that

1 same goal in January or July 2, 2004; right?

2 A Yes.

3 Q Going to produce decking lumber; right?

4 A Yes.

5 Q And what we're looking at in the letter in
6 July 2, 2004 are changes in the way you make the decking
7 lumber; right?

8 MR. TREMBLAY: Argumentative. Document speaks
9 for itself. He didn't author the document.

10 THE WITNESS: Could you rephrase the question,
11 please?

12 BY MR. JULANDER:

13 Q Sure. Paragraphs 1 through 10, excluding No. 3
14 again about the forming unit -- these are items that you
15 assisted in initiating in order to change how the decking
16 lumber would be made; right?

17 A Yes, sir.

18 Q But we're not talking about making an entirely
19 new family of commercial products in July of 2002, are
20 we?

21 MR. TREMBLAY: Vague and ambiguous as to
22 "family."

23 THE WITNESS: I tell you what. Your phrase,
24 "entirely new commercial product," I think you are wrong.

25 ///

1 BY MR. JULANDER:

2 Q Well, entire new family.

3 A Because commercial product did not exist before
4 my time.

5 Q In November of 2003, Century Products was trying
6 to create decking like doughnuts; okay?

7 A Yes.

8 Q And in July of 2004, Century Products was still
9 trying to produce doughnuts in that sense, using your
10 analogy?

11 A Yes.

12 Q And what you did was you changed some of the
13 ingredients to the original mixture to create doughnuts.
14 But you're still making doughnuts; right?

15 A Yes, sir. But to continue my analogy, before my
16 time, you are not able to eat doughnuts --

17 Q Yes. That's fair.

18 A -- that you can sell in any bakery.

19 MR. JULANDER: We've made you hungry.

20 THE WITNESS: And he proved it. It's edible.

21 BY MR. JULANDER:

22 Q Dr. Shutov, I'm going mark our next document as
23 Exhibit 13.

24 (Exhibit No. 13 marked for identification.)

25 MR. TREMBLAY: Is that your only copy?

1 MR. JULANDER: I got it. It's up here.

2 THE WITNESS: What's your question?

3 MR. TREMBLAY: Well, he's getting the document.

4 BY MR. JULANDER:

5 Q For the record, this document was, first of all,
6 produced by your attorneys to me. The document is a
7 table with handwriting on it. And in fact, Dr. Shutov,
8 do you recognize generally what this document is? I'm
9 looking, first of all, on page -- the first page.

10 A Yes, I recognize.

11 Q What is this document?

12 A That is a -- how to say in English? It's a
13 working sheet which our technicians make during real
14 experiments. I have no relation to this, you know. They
15 wrote everything which they able to read at monitors and
16 everything.

17 Q And the people who write in this document, were
18 they working under your supervision in terms of running
19 formulations through the processing equipment?

20 A Yes, sir.

21 Q I want to be clear about the date of this
22 document. It's very hard to read. It's up at the top.
23 It says "Date." It says "11," and I believe that's a
24 "16," and then I think it's "2004." And I want to
25 confirm that because I want you to look with me here --

1 no, no. Let me show you something.

2 On the "Time" column, do you see the time? It
3 goes down to 13:14, 13:16. When you turn to Page 2, it's
4 14:19, et cetera. So these documents -- I believe it's
5 consecutive.

6 A Here it's much easier to read.

7 Q I just want to confirm the date appearing on
8 Page 2, "11/16/04," is the same as Page 1.

9 MR. TREMBLAY: He didn't create the document.
10 It's speculation. It also has a footer that's
11 preprinted.

12 THE WITNESS: I'm not sure.

13 MR. TREMBLAY: The footer says "10august04." So
14 I don't know if that means the form.

15 MR. JULANDER: I think that's the form.

16 MR. TREMBLAY: But he didn't create the
17 document.

18 MR. JULANDER: I understand that.

19 MR. TREMBLAY: And the document speaks for
20 itself. It's hardly legible on the first page, but
21 you're correct as to what it says on the second page.

22 BY MR. JULANDER:

23 Q In your experience, Dr. Shutov, does this appear
24 to be consecutive running pages?

25 MR. TREMBLAY: If you know. He's basically

1 asking you if you've seen this type of document before.

2 THE WITNESS: Oh, many times. But I never work
3 with. Somebody else wrote it down, you know. I never
4 checked, you know. Just sometimes I says make mark that
5 it was something, "smell" or "yellow" or --

6 BY MR. JULANDER:

7 Q You don't write on the document, but --

8 A I don't.

9 Q But do you look at it?

10 A Normally I don't.

11 Q Only if you need to?

12 A Yes.

13 Q Okay. And all I'm trying to do is just
14 determine the date, if I can -- if we can, based on your
15 experience and whatever experience you've had in looking
16 at these.

17 MR. TREMBLAY: I don't know that he can. He
18 just said "I don't know."

19 BY MR. JULANDER:

20 Q Based on your experience, you can't tell me one
21 way or the another if these two pages are consecutive?

22 A I don't know.

23 Q Okay. Do you recall, Dr. Shutov -- actually,
24 look at the top, underneath where it says "1st board #."
25 It says "781." Do you see that?

1 A I'm not sure.

2 MR. TREMBLAY: It's this right here.

3 THE WITNESS: It's 1 -- 786.

4 BY MR. JULANDER:

5 Q It could be "786." It's a little hard to read.

6 MR. TREMBLAY: Object. Speculation.

7 BY MR. JULANDER:

8 Q Underneath that, it says "original recipe with
9 new gray belts." Do you see that?

10 A Yes, yes.

11 Q Did you ever -- were you ever involved in
12 running a formulation through the processing equipment
13 that you understood was the original recipe?

14 A Original is the same, synonymous --

15 MR. TREMBLAY: Synonymous.

16 THE WITNESS: -- for basic recipe, my
17 understanding. I never use the term "original recipe,"
18 but I presume. I don't know.

19 BY MR. JULANDER:

20 Q Let me go directly to the heart of the question.
21 Did you ever oversee a formulation run which was
22 expressly for the purpose of testing the Century-Board
23 licensed process?

24 A Could you seriously rephrase your question?

25 Q Yes. I want to know if, for purposes of this

1 arbitration or any other purpose, you were asked to run
2 the original Century-Board formulation through the
3 processing equipment.

4 A No.

5 Q You were never asked that?

6 A No.

7 Q So as far as your understanding goes, when I see
8 "original recipe," that original recipe is your original
9 recipe? It's not having anything to do with the original
10 Century-Board formulation?

11 MR. TREMBLAY: Okay. It's speculation -- hold
12 on. It's speculation because you referred to Exhibit 13.
13 He's already told you he doesn't know what that means.

14 MR. JULANDER: I understand.

15 MR. TREMBLAY: Okay. So he can't answer that
16 question. I don't want him to guess.

17 BY MR. JULANDER:

18 Q Okay. Do you understand my question, first of
19 all?

20 A Yes.

21 Q Without guessing, can you answer the question?

22 A If the date is correct --

23 MR. TREMBLAY: Speculation.

24 THE WITNESS: -- yes, has nothing to do with
25 Century-Boards.

1 BY MR. JULANDER:

2 Q And you're not aware of any time when the
3 Century-Board licensed process -- sure. You're not aware
4 of any time that Century Products has run through the
5 original Century-Board process formulation for testing?

6 MR. TREMBLAY: Vague and ambiguous.

7 THE WITNESS: I tell you what. What happened --
8 the question is -- it seems I know. But Ted Butteriss --
9 I repeat the story from Ted Butteriss. I never present.
10 But when Ted Butteriss will be here, you can ask him.

11 What happened one day, he was working with our
12 technician, Ryan. And he found -- Ted Butteriss -- that
13 the concentration and types of polyols was very different
14 from our basic formulation. Then he notice it was
15 Wade Brown formulation. And he asked him, "Why did you
16 change without first permission? What for?"

17 The technician, without any education, he said,
18 "I wanted to test something." Okay. And what we
19 produce -- not "we," Ted Butteriss. They produce boards
20 according to Wade Brown recipe but with new forming unit
21 created by Ted Butteriss. Boards, it seems, had terrible
22 properties. And it seems Mr. Butteriss still keeps this
23 board. You can ask Ryan why he made it. Ted Butteriss
24 has some assumption.

25 What is much more important for us today is

1 before even very good forming unit -- which we have now
2 created by Ted Butteriss -- and bad formulation, let us
3 say -- or not "bad." Century-Board formulation produces
4 terrible product. In order to produce marketing product,
5 you have to have proper formulation and proper equipment.
6 When you have proper formulation, bad equipment, no
7 product. When you have good formulation -- when you have
8 good forming unit and bad formulation, bad product. It's
9 two-equipment, two-stage process, you know, mixing
10 together, preprocessing, and processing in. And right
11 now I added the third, it's the coating.

12 And so again, it -- it happened -- how to say,
13 how to say, how to say? It happened accidentally.
14 Because this guy, he wanted to prove something to him, I
15 presume to Wade, you know, that it's not necessary to
16 have our formulation to produce with good forming unit.
17 But he wasn't successful. And ask Ted. I know from just
18 his words. And we were shocked.

19 And after that, the guy -- something happened
20 with him. You know, it's different sorry.

21 BY MR. JULANDER:

22 Q Do you know if the board or boards -- first of
23 all, do you know how many boards that Ryan produced?

24 A Maybe ten.

25 Q Do you know what happened to those boards?

1 A Mr. Butteriss tested when he knew. And then he
2 tried to have a serious talk with him, why he made it,
3 did he -- was he charged with Mr. Brown to make this
4 illegal experiment? You know what I mean? He refused
5 everything. He said that for his career. But I don't
6 want to speak Wade. Ask today Mr. Butteriss.

7 Q Do you know what happened to the boards, the ten
8 boards?

9 A He tested in order to be sure that they below
10 the market properties. It -- maybe he has some more. I
11 don't know. Ask him.

12 Q Okay.

13 MR. TREMBLAY: Done with 13?

14 MR. JULANDER: Done with 13.

15 I need to take a short break, and I'm going to
16 try and actually wrap this up.

17 (Recess.)

18 BY MR. JULANDER:

19 Q Dr. Shutov, I'm going to mark our next document
20 in order as Exhibit 14.

21 (Exhibit No. 14 marked for identification.)

22 MR. TREMBLAY: Thank you.

23 BY MR. JULANDER:

24 Q For the record, Exhibit 14 is a document
25 entitled "Composite Material Including Rigid Foam with

1 Inorganic Fillers."

2 First ask you, Dr. Shutov, if you've ever seen
3 this document before today.

4 A It seems I saw it. It seems it's a -- yes.
5 Yes, I saw it.

6 Q Do you know which -- who drafted this document,
7 our Exhibit 14?

8 A My answer is I don't know.

9 Q Did you work with any patent attorneys in terms
10 of a patent application for the material that Century
11 Products is developing for the plastic lumber?

12 A Did I work with patent attorney?

13 Q Yes.

14 A Yes.

15 Q Who was it that you worked with?

16 A I forgotten his name. I forgotten his name.

17 Q Do you know where he's located?

18 A Maybe in San Diego. I'm not sure. I never seen
19 him in person.

20 Q You just talked to him over the phone?

21 A Yes. And by --

22 MR. TREMBLAY: Counsel, do you know? Was this
23 your partner he's talking --

24 MR. TREMBLAY: I don't know who he's talking
25 about.

1 BY MR. JULANDER:

2 Q Okay. How long ago did you work with him?

3 A Maybe Thumberly, Thumberly -- something like
4 that. I'm not sure. I don't want to speculate.

5 Q How long ago did you work with the patent
6 attorney on this document that we're looking at here?

7 MR. TREMBLAY: Well, was it this document? He
8 hasn't established that.

9 BY MR. JULANDER:

10 Q Do you understand, Dr. Shutov, that this
11 document, Exhibit 14, "Composite Material Including Rigid
12 Foam with Inorganic Fillers," represents the patent
13 application from Century Products?

14 MR. TREMBLAY: Do you know that?

15 THE WITNESS: No.

16 BY MR. JULANDER:

17 Q You don't know that one way or the other?

18 MR. TREMBLAY: I think he's going to be
19 speculating in this whole area.

20 MR. JULANDER: Then this will be fast.

21 MR. TREMBLAY: I think it will be at least in
22 the creation of the document.

23 BY MR. JULANDER:

24 Q Tell me, Dr. Shutov. Did you have an
25 opportunity to review the -- well, let me ask you an even

1 more foundational question.

2 Do you understand that Century Products has
3 filed a patent application relating to the formulations
4 or the materials that you're using -- that Century
5 Products is using to create plastic lumber?

6 A Yes, uh-huh.

7 Q Do you have an understanding as to when that
8 application was filed?

9 MR. TREMBLAY: With the patent office?

10 MR. JULANDER: Yes.

11 THE WITNESS: I do not know whether the
12 application passed through the U.S. Patent Office.

13 BY MR. JULANDER:

14 Q No, but when it was presented to the U.S. patent
15 office.

16 MR. TREMBLAY: The patent application.

17 THE WITNESS: I don't know.

18 BY MR. JULANDER:

19 Q Did you have an opportunity to review any
20 document that you understood represented or was the
21 patent application that was to be given to the patent
22 office?

23 A I reviewed. I reviewed maybe once a draft
24 version from my patent attorney.

25 Q And if I'm understanding correctly, earlier you

1 testified that you created the original patent disclosure
2 document.

3 A Yes, sir.

4 Q That was a two-page document?

5 A No more, yes.

6 Q And the patent application that you reviewed,
7 did it contain within it the information that you had
8 given to the attorney in the patent disclosure document?

9 A Yes. It should be, yes.

10 MR. TREMBLAY: Well, wait a second. Did it or
11 did it not? Do you know?

12 He didn't see the patent application, so --

13 MR. JULANDER: Well, but he did review a
14 document that he thought represented the patent
15 application -- if I'm understanding your testimony
16 correctly.

17 THE WITNESS: Yes, yes.

18 BY MR. JULANDER:

19 Q And what you reviewed, did it contain the
20 information that was in your patent disclosure document?

21 A Yes.

22 Q Okay. Now, at any time, did you review the
23 patent application filed by Century-Board in connection
24 with its material for making plastic lumber?

25 A Yes. In November or December 2003, Dr. --

1 Mr. Taylor sent me a draft version of patent application.
2 It was about 20, 25 pages. And he said Mr. Brown drafted
3 this and what I think of it. So --

4 Q What do you recall telling Mr. Taylor about that
5 patent application?

6 A His question was -- we discussed last time, "Is
7 it patentable based on your experience? You have so many
8 patents. Is it patentable or not?"

9 MR. TREMBLAY: Asked and answered.

10 BY MR. JULANDER:

11 Q What did you tell Dr. Taylor -- or Mr. Taylor?

12 MR. TREMBLAY: Asked and answered.

13 THE WITNESS: I said no.

14 BY MR. JULANDER:

15 Q Why did you say that?

16 A Based on my experience -- I'm not a patent
17 attorney -- the claims in that documents were too broad,
18 too broad application.

19 MR. TREMBLAY: Overbroad?

20 THE WITNESS: Yes, yes.

21 BY MR. JULANDER:

22 Q Did you read the specifications in that patent
23 application, Mr. Brown's patent application for
24 Century-Board?

25 A What does mean, "specification"?

1 Q That is the detail of the disclosure.

2 A Yes.

3 Q When you read these specifications, the
4 disclosure of the invention, did you come to any
5 understanding or opinion as to whether any information
6 contained in the specifications was potentially
7 patentable?

8 MR. TREMBLAY: At that time?

9 MR. JULANDER: At that time.

10 MR. TREMBLAY: Thank you.

11 THE WITNESS: At that time, meaning when I read
12 it the very first time?

13 MR. TREMBLAY: Yeah. When you were discussing
14 it with Mr. Taylor, you're looking at it. Did you come
15 to any opinion?

16 BY MR. JULANDER:

17 Q Not the claims, but the specifications, the
18 disclosure of the invention.

19 A What I want to tell you, based on my experience,
20 everything but claims is not important. The claims,
21 especially Claim No. 1 which we call is the main claim --
22 all other, 20, 30 more claims, No. 2, 3, 4, 35, are
23 dependable on Claim No. 1, is the main issue. And my
24 answer to him was based on the Claim No. 1, it is not
25 patentable because Claim No. 1, the main claim, is too

1 broad -- overbroad, as we say. It seems that -- okay. I
2 want to give you some example, but --

3 MR. TREMBLAY: Well, his question really was --
4 did he answer your question, Counsel?

5 MR. JULANDER: Yeah, I think so.

6 MR. TREMBLAY: To your satisfaction?

7 MR. JULANDER: That's fine.

8 MR. TREMBLAY: I'm not examining, here.

9 BY MR. JULANDER:

10 Q I'd like you to look at Page 12 of our
11 Exhibit 14, please --

12 A Yes.

13 Q -- and read the first claim that's here in this
14 document.

15 MR. TREMBLAY: To himself?

16 MR. JULANDER: Yes.

17 MR. TREMBLAY: Go ahead.

18 THE WITNESS: It's right here, yeah.

19 MR. TREMBLAY: Let him know when you've
20 finished.

21 THE WITNESS: Do you ask me something?

22 MR. TREMBLAY: He just wants you to read it to
23 yourself and let him know when you've finished.

24 THE WITNESS: Yes.

25 ///

1 BY MR. JULANDER:

2 Q Tell me, based on your review of Mr. Brown's
3 patent application and now your review of this document,
4 do you have an opinion as to whether or not Paragraph 1,
5 this claim is too broad?

6 MR. TREMBLAY: Today, does he have an opinion?

7 MR. JULANDER: Yes.

8 BY MR. JULANDER:

9 Q As you sit here today.

10 A No, no. It's not too broad.

11 Q Why not?

12 A Because, as I remember in Mr. Brown, it was
13 saying first polyol having first molecule weight. The
14 second polyol has the second molecule weight and
15 something else.

16 But if you characterize any polyol just with
17 molecule weight, it's not enough. You have to indicate
18 functionality or hydroxyl number and so on. So here is
19 functionality. So molecule weight and functionality.

20 Q In connection with your work on the Century
21 Products patent application, were you asked to work in
22 any way to patent around the Century-Board application?

23 MR. TREMBLAY: Vague and ambiguous.

24 Go ahead.

25 THE WITNESS: Work around?

1 BY MR. JULANDER:

2 Q Yes. Do you understand my question?

3 A Not around, no.

4 Q Let me ask you a question first. Do you know if
5 the existence of the Century-Board patent application
6 that you reviewed --

7 A Yes.

8 Q -- was disclosed to the patent and trademark
9 office in connection with the Century Products patent
10 application?

11 MR. TREMBLAY: Calling for speculation based on
12 his previous answers.

13 THE WITNESS: You ask of me about very first
14 version two years ago or --

15 BY MR. JULANDER:

16 Q What you saw in the patent application that you
17 understood was the Century-Board patent application.

18 MR. TREMBLAY: Still speculation.

19 THE WITNESS: Yes. I don't understand clearly
20 your question.

21 BY MR. JULANDER:

22 Q I just want to know, do you know -- do you have
23 any information --

24 A Yes.

25 Q -- that the Century-Board patent application was

1 disclosed or identifying to the patent and trademark
2 office in connection with Century Products' patent
3 application?

4 MR. TREMBLAY: Calls for speculation.

5 THE WITNESS: I tell you what. I found one
6 example. If I don't forget, Example No. 1, when
7 Mr. Brown describes recipe and production of boards using
8 extruder, three or four more examples described a mold
9 box. And based on the size of the extruder, I thought
10 that maybe -- it's maybe our extruder.

11 BY MR. JULANDER:

12 Q I don't think there was any question that it was
13 the Century Products extruder. But that wasn't my
14 question.

15 A Okay. Rephrase.

16 Q You saw a patent application on behalf of
17 Century-Board --

18 A Yes.

19 Q -- related to the technology that Century
20 Products was working at the time to make decking lumber;
21 correct?

22 A Yes.

23 Q And you knew that that existed at the time that
24 you were reviewing the patent application for Century
25 Products; right?

1 MR. TREMBLAY: Assumes -- he never reviewed the
2 Century Products application.

3 MR. JULANDER: Well, that's true.

4 BY MR. JULANDER:

5 Q Let me go back and make sure, because I didn't
6 mean to imply that you did.

7 In other words, you reviewed a document that you
8 understood was related to the Century Products' patent
9 application; correct?

10 MR. TREMBLAY: Just the disclosure statement?

11 THE WITNESS: Disclosure, yes.

12 BY MR. JULANDER:

13 Q No. You drafted the disclosure. I'm not asking
14 about that.

15 After you drafted the closure document, you sent
16 it to some patent attorney, and they sent you back a
17 document that was connected in some way to the Century
18 Products patent application; right?

19 A Yes.

20 Q And when you reviewed that document, you
21 understood that it's basically the same subject matter as
22 the Century-Board patent application that you initially
23 reviewed; right?

24 A You want to say that I made a patent disclosure
25 and then our patent attorney made a patent application

1 based on Century-Board's information?

2 Q No, no. You understood that the document you
3 were reviewing in connection with Century Products'
4 patent application was on the same subject matter as the
5 Century-Board patent application?

6 A In what sense, subject matter?

7 Q They were both seeking to make plastic lumber
8 out of polyurethanes.

9 A Oh, yes, yes, same subject matter.

10 Q And my question is, do you have any information
11 that the Century-Board patent application that you saw
12 was disclosed or revealed to the patent and trademark
13 office in connection with the Century Products patent
14 application?

15 MR. TREMBLAY: If you know.

16 THE WITNESS: I don't know.

17 BY MR. JULANDER:

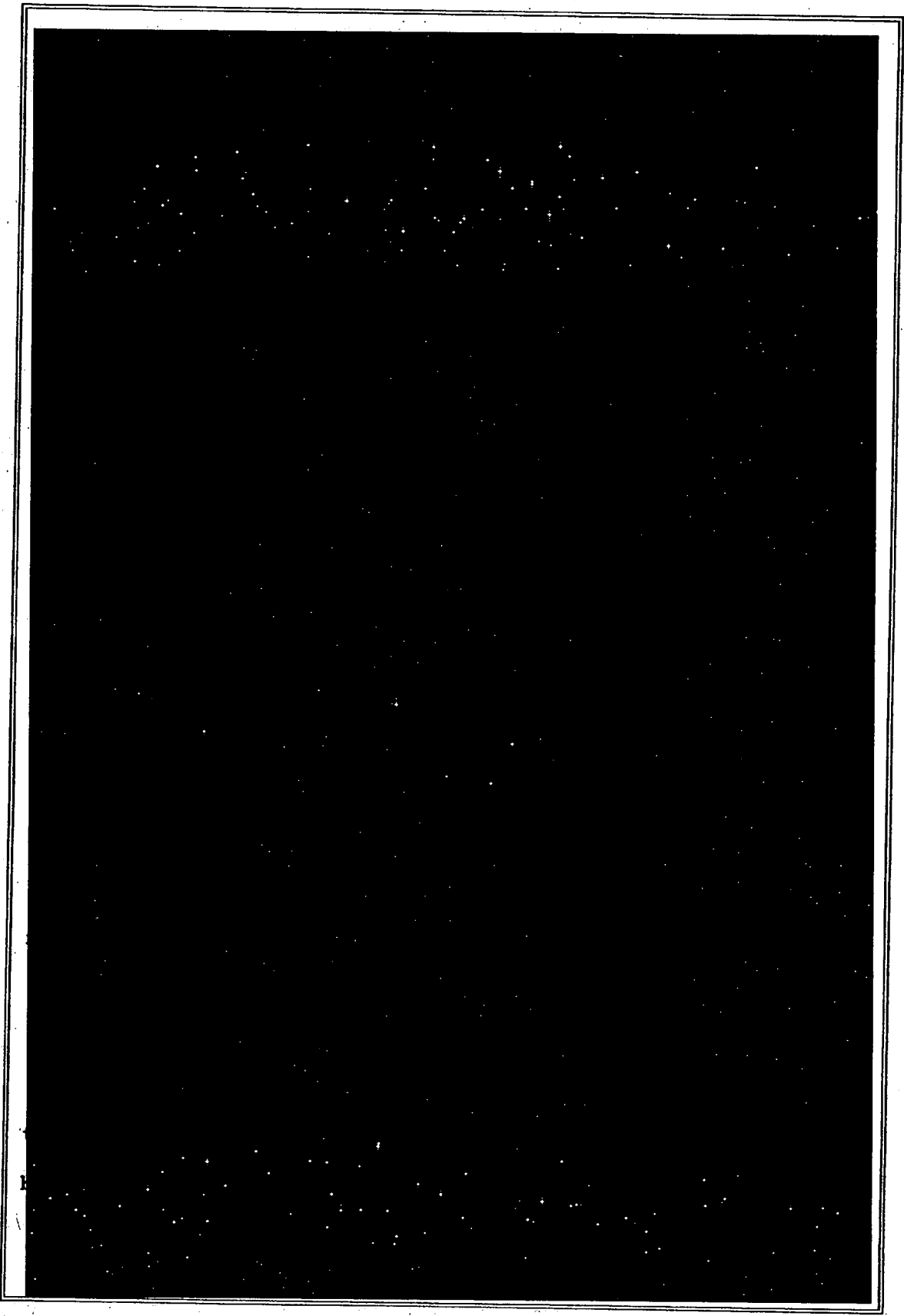
18 Q Did you inform your attorney, the patent
19 attorney, that there was an existing Century-Board patent
20 application on the same subject matter?

21 MR. TREMBLAY: Hold on. That's attorney-client
22 privilege. I'm going to instruct him not to answer.
23 That's attorney-client privilege.

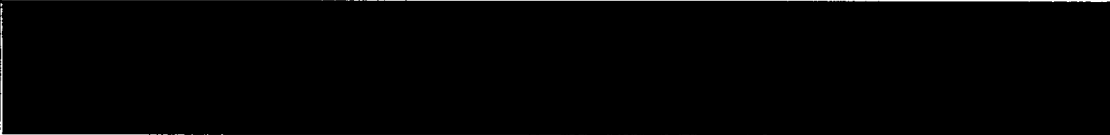
24 Don't answer the question.

25 MR. JULANDER: No. I withdraw that.

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THE WITNESS: Did I answer your question?

MR. TREMBLAY: Generally. But I think he said something more specific.

THE WITNESS: The question was generally.

MR. TREMBLAY: I mean, if you had the application -- and I mean, I don't think there's any dispute.

MR. JULANDER: Well, part of the problem, Counsel, is that this is it. This is all I've been given right here.

THE WITNESS: So I don't know.

MR. JULANDER: Whether or not there's a real application out there, I don't know because Counsel has never provided me with one.

MR. TREMBLAY: He can review this and you can ask if it identifies -- I mean, he can look at it, take a break, and read it. And then you can come back and ask him those questions. I mean -- but I don't think that's a real -- I don't think that's a real issue and dispute as to what we're doing. I don't know if you want him to do that.

I'm just trying to suggest, I think those are some of the things that are self-evident. I think those

1 are some of the facts that are self-evident. It's
2 probably a question for our designated expert. But it's
3 a legitimate question. I don't have a problem with it.

4 MR. JULANDER: No. You're okay.

5 MR. TREMBLAY: I'm just trying to --

6 MR. JULANDER: Let me think about that for a
7 minute, and then we'll move on and come back to it.

8 MR. TREMBLAY: Sure.

9 BY MR. JULANDER:

10 Q Dr. Shutov, you've produced to us today some
11 books -- hardbound books and some printed reports. Are
12 you aware -- Dr. Shutov, is there -- within these
13 materials, are you able to find in any -- in its complete
14 state, the Century Products formulation for making
15 plastic lumber?

16 A No.

17 Q Now, I imagine that in these books you'd be able
18 to find chemistry and chemical engineering concepts that
19 are incorporated into the Century Products formulation or
20 process; correct?

21 A Yes.

22 Q But is it your testimony that at no single place
23 in any one of these books you -- would you be able to
24 find the Century Products formulation for making plastic
25 lumber?

1 A Essentially, product formulation, no way to find
2 because it wasn't published anywhere. Was your question?

3 Q Is that same answer true with respect to the
4 Century-Board licensed process that we've discussed
5 earlier?

6 MR. TREMBLAY: That assumes a fact not in
7 evidence and calls for speculation. That's the dilemma
8 of he doesn't necessarily know what -- he's a blind man
9 looking at an elephant.

10 BY MR. JULANDER:

11 Q Let me ask you a different way, Dr. Shutov.

12 In November of 2003, you received a formulation
13 for making plastic lumber; correct?

14 A Yes.

15 Q Okay. Is that formulation found in any single
16 place in any of the materials that you've presented here
17 to us today?

18 A Here, not.

19 Q Is it somewhere else?

20 A You can find very similar patents issued
21 25 years ago based on polyurethane foam, ash, 8 percent.
22 Several patents issued by Dow Chemical, Mushovic,
23 Stubby -- I've forgotten his name. It's public available
24 materials which has been made 20 years before Wade,
25 before Century-Board.

1 Q Other than the patent, patents that you're
2 discussing, are you familiar with the formulation --
3 well, first of all. Let me ask you a different question.

4 Is it your testimony that the formulation you
5 found at Century Products in November of 2003 is
6 identical to any one of the patents that you've reviewed?

7 MR. TREMBLAY: Or had prior knowledge of?

8 MR. JULANDER: Or had prior knowledge of, sure.

9 MR. TREMBLAY: I'm going to interpose an
10 objection of vague and ambiguous. There's a presumption
11 too; it assumes a fact not in evidence.

12 THE WITNESS: Please repeat the question again.

13 BY MR. JULANDER:

14 Q Is it your testimony, Dr. Shutov, that the
15 formulation that you found being used by Century Products
16 in November of 2003 is identical to the formulations that
17 you've seen in these patent applications that you've just
18 related to us?

19 MR. TREMBLAY: Also argumentative.

20 THE WITNESS: Identical -- actually, I don't
21 know because I read -- I read those patents, but I didn't
22 remember the numbers, concentrations, and so on. But the
23 idea is absolutely the same.

24 BY MR. JULANDER:

25 Q And what is that idea?

1 A To use foamed polyurethane as matrix, to add a
2 lot of fly ash to foam, and to use as construction
3 material.

4 Q Isn't that exactly the same thing that Century
5 Product was seeking to patent -- wait a minute. Let me
6 go back and let's read your answer.

7 Would you read back his answer, please?

8 (Record read.)

9 BY MR. JULANDER:

10 Q That's exactly what Century Products is doing in
11 its patent application, isn't it?

12 A Well, I tell you what --

13 Q Well, answer that "yes" or "no." And then can
14 you explain as much as you want.

15 MR. TREMBLAY: It's argumentative.

16 You can answer, if you can answer "yes" or "no."

17 MR. JULANDER: Would you read back his answer,
18 please?

19 MR. TREMBLAY: His answer or the question?

20 MR. JULANDER: They're interrelated.

21 MR. TREMBLAY: Well, what do you want? He asked
22 for the question. That's all I'm asking.

23 MR. JULANDER: We can try that.

24 Would you read back that last question?

25 (Record read.)

1 BY MR. JULANDER:

2 Q Aren't they identical?

3 MR. TREMBLAY: Okay. Calls for speculation.

4 THE WITNESS: No, exactly not, exactly not.

5 Because the patent I'm talking about are based on
6 different family of polymer matrix. It's the same
7 polyurethane foam based on polyester foams which has
8 nothing to do with poly-ether.

9 BY MR. JULANDER:

10 Q Dr. Shutov, you've got to listen to my question;
11 okay? Because if you don't, we're going to be here all
12 day.

13 When you came to Century Products in 2003, were
14 you handed a formulation to work with that was --
15 involved polyester polyols?

16 A No.

17 Q Okay. You were given a different formulation
18 dealing with poly-ether polyols; right?

19 A Yes.

20 Q Okay. And that formulation that deals with
21 poly-ether polyols -- not polyester polyols, poly-ether
22 polyols. Is that formulation identical to the patents
23 that you had talked about earlier?

24 A No, because previous patents has been made on
25 polyester polyols, to my knowledge.

1 Q Is it your understanding that Mr. Brown's
2 formulation was strictly relating to polyester polyols?

3 MR. TREMBLAY: If you know.

4 THE WITNESS: What I know, I never read. But
5 what I know from my colleagues, the license they bought
6 was based on polyester polyols.

7 BY MR. JULANDER:

8 Q And so is it your assumption, then, that when
9 you came to Century Products in 2003 and you were dealing
10 with the formula that was -- that incorporated poly-ether
11 polyols, that was not Mr. Brown's formula you were
12 working with?

13 MR. TREMBLAY: I don't understand what you're
14 saying. It's vague and ambiguous.

15 Do you understand?

16 THE WITNESS: No.

17 MR. JULANDER: Let me withdraw it. We'll try it
18 again.

19 BY MR. JULANDER:

20 Q When you came to Century Products in 2003, you
21 were presented with a formulation for making plastic
22 lumber out of poly-ether polyols; right?

23 A Yes.

24 Q Did you have an understanding that that
25 formulation using poly-ether polyols was not developed by

1 Mr. Brown?

2 A I don't know.

3 MR. TREMBLAY: Vague and ambiguous.

4 BY MR. JULANDER:

5 Q You didn't know one way or the other?

6 A I don't know.

7 Q Have you ever had an understanding of what
8 Mr. Brown's formulation was?

9 A I don't know about Mr. Brown's formulations.
10 But I -- what I know, I repeat. The license which
11 company bought was based on polyester polyols.

12 Q You're certain of that?

13 A Yes.

14 Q Why do you say that?

15 A Because there were many discussions about
16 license. I never read the license. And they told me it
17 was based on Mushovic patents. And to my knowledge,
18 Mushovic patents are based on polyester polyols.

19 MR. TREMBLAY: Have you answered the question?

20 THE WITNESS: I don't understand.

21 MR. JULANDER: That's fine. Could we take a
22 short break?

23 MR. TREMBLAY: Sure.

24 (Recess.)

25 MR. JULANDER: We're back on the record.

1 BY MR. JULANDER:

2 Q I want to clarify, Dr. Shutov. When we've been
3 talking about changes to the process, the formulation
4 that you received in connection with your work as a
5 consultant, we're not talking about changes to a
6 polyester polyol system; right? We're talking about
7 changes to a poly-ether polyol formulation; right?

8 A Yes.

9 Q And whoever came up with the formulation that
10 involved poly-ether polyols, whether that was
11 Century-Board or Century Products or somebody else, it
12 doesn't matter. I just want to get it clear in my mind
13 that -- actually, let me start over. I withdraw that.

14 When you were asked to create a whole new
15 product, was that a whole new product relative to a
16 polyester polyol system?

17 A I totally don't understand you. What do you
18 mean, "relative"?

19 Q See, you've given me your understanding that the
20 licensed process was a polyester polyol --

21 A Yes.

22 Q -- formulation; okay? And there will be other
23 evidence -- there will be other evidence in this case
24 that the licensed process was both polyester polyol and a
25 poly-ether polyol system.

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A No.

MR. TREMBLAY: Well, just assume. He's making a representation.

BY MR. JULANDER:

Q I'm telling you, there will be other evidence.

MR. TREMBLAY: From his side.

BY MR. JULANDER:

Q We're going to present evidence that Mr. Brown gave to Century Products a poly-ether polyol system.

A Is your question to me?

MR. TREMBLAY: No. He's just telling you.

BY MR. JULANDER:

Q Okay. And so -- I forgot where I was going.

MR. TREMBLAY: I know where you're going.

MR. JULANDER: Good, because we get on these little side eddies.

MR. TREMBLAY: I think you've already established it. You've already established what you want.

BY MR. JULANDER:

Q I think I made a breakthrough in terms of understanding where you were coming from on the license process issue, you understanding the license process issue as a polyester polyol formulation.

A Yes. I was informed that is based on.

1 MR. TREMBLAY: What he calls it, what he calls
2 it, right. Because it's like the blind man with the
3 elephant. That's why I've been objecting for a long
4 time.

5 BY MR. JULANDER:

6 Q Okay. Then let me revisit our books, and then I
7 think we're about done; okay?

8 Separate and apart from the polyester polyol
9 formulation that you understand was the licensed process,
10 is there any publication that you are aware of that has
11 within it the complete formulation that you saw at
12 Century Products in November of 2003?

13 MR. TREMBLAY: Asked and answered.

14 THE WITNESS: Please rephrase.

15 BY MR. JULANDER:

16 Q Okay. I'm focusing on the poly-ether polyol
17 system you received in November of 2003.

18 MR. TREMBLAY: Was it previously published?

19 BY MR. JULANDER:

20 Q Okay. Was that previously published, to your
21 knowledge?

22 A A lot of publications and books, even here,
23 polyurethane foam based on poly-ether polyols, of course.

24 Q Was it published in its complete form?

25 A No -- you mean, excuse me. I withdraw my

1 answer.

2 You mean poly-ether -- polyurethane foam based
3 on polyester and something else?

4 Q Dr. Shutov, the formulation that you had in
5 November of 2003 from Century Products, that was
6 poly-ether polyols, highly filled, lots of families of
7 chemicals making it up in order to make plastic lumber --
8 okay, that formulation. Is that formulation in any one
9 place in any of the publications that you're aware of?

10 MR. TREMBLAY: Calls for speculation. Go ahead.

11 THE WITNESS: No.

12 BY MR. JULANDER:

13 Q Is that formulation represented in any of the
14 patent applications that you're aware of -- or patents,
15 I'm sorry?

16 MR. TREMBLAY: Previously?

17 BY MR. JULANDER:

18 Q Previously issued patents that you're aware of.

19 A I don't know.

20 Q Well, as to the ones that you're aware of; do
21 you know? Do previously issued patents that you're aware
22 of -- is the formulation that you found in November of
23 2003 represented in any of those patent applications that
24 you are personally aware of?

25 MR. TREMBLAY: Objection. Vague and ambiguous.

1 THE WITNESS: No, I don't know. Maybe somebody
2 published very similar, but I don't know.

3 BY MR. JULANDER:

4 Q And is the -- you described earlier the Century
5 Products patent application.

6 MR. TREMBLAY: You can ask him just as far as he
7 knows.

8 MR. JULANDER: I need to get -- tie this up.

9 BY MR. JULANDER:

10 Q Dr. Shutov, earlier I asked you what the
11 patentable idea was, in your estimation, relating to the
12 Century Products patent. And your answer was to use
13 foamed polyurethane -- I'm sorry, to use foamed
14 poly-ether polyurethane as a matrix, to add a lot of fly
15 ash to foam, and to use as a construction material.

16 A Yes.

17 Q That description of your invention is exactly
18 what Century Products was attempting to do with its
19 formulation in November of 2003; correct?

20 A No.

21 Q How is it different?

22 A Because when we use the word, term, "matrix" or
23 "binder," binder is a chemical product between -- just
24 the main issue -- polyol and polyols and isocyanate. Iso
25 is the curing agent. If you change the type of polyols,

1 you have different matrix, you know? We call
2 "polyurethane foam based on poly-ether." It's a huge
3 family.

4 But when you use different types of poly-ether
5 polyol, different chemistry, different chemical,
6 mechanical, biological property and so on. Because I
7 changed the type of polyol, I have different matrix
8 binder. But our English is too poor to describe using
9 one word.

10 [REDACTED]
11 [REDACTED] And so my answer is "no" because
12 different matrix using the same -- how to say --
13 terminology.

14 MR. TREMBLAY: Belated best evidence objection.
15 That's why.

16 THE WITNESS: It's the same. It is
17 understandable for me. It's okay. But if not, I can
18 explain more.

19 BY MR. JULANDER:

20 Q No, no. I think you're being relatively clear.
21 If I'm understanding you, you're saying that -- well, let
22 me even withdraw that. Who cares?

23 Let me go back to my original question. Is it
24 your testimony that the poly-ether polyol formulation
25 that you were working with in November of 2003 was not

1 using a foamed poly-ether polyol as a matrix and adding a
2 lot of fly ash to foam and to use as construction
3 material?

4 MR. TREMBLAY: Misstates his testimony and also
5 is vague and ambiguous.

6 THE WITNESS: General term, general name is the
7 same. But the chemical additives, absolutely different.

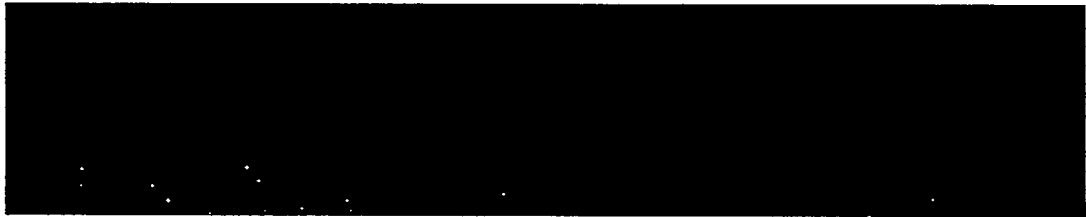
8 BY MR. JULANDER:

9 Q So what you're telling me is in this general
10 description of what the invention is in the Century
11 Products patent application, on the very broadest terms,
12 generally is exactly what Century Products was doing back
13 in November of 2003; however, you have changed the
14 details of how this general characterization is done?

15 A Disagree. Not details. I completely change the
16 matrix because I changed one of the major component. So
17 we still -- we still call this as cookies but
18 differently.



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Q Dr. Shutov, earlier you testified, when you examined the Century-Board patent application, you felt that its claims were too broad for the claims to be patentable. Do you recall your testimony on that?

A Yes, sir.



Q What Century Products is doing today is covered by the very broad claim that you felt was unpatentable by Century-Board; correct?

MR. TREMBLAY: Calls for a legal conclusion.

THE WITNESS: I'm not a patent lawyer to judge. What I want to tell, that his Claim No. 1 is so broad, that it is able to cover any polyurethane foam material. And because of that, there is no way, based on my experience. It's the same if you claim a new type of car

1 and to say the future is "my car has four wheels"; okay?

2 BY MR. JULANDER:

3 Q So, then, the answer to my question is yes, what
4 Century Product is doing is certainly covered within that
5 first claim?

6 A No -- yes.

7 Q Right?

8 A Yes.

9 MR. TREMBLAY: Of course, when you quote that,
10 you're going to quote it in context; right?

11 MR. JULANDER: Of course. Okay. I think I'm
12 done.

13 MR. TREMBLAY: Let's stipulate that the
14 certified court reporter will be relieved of her duties
15 under the Code and whatever else applies, the arbitration
16 in substitution thereof. She will transmit the original
17 transcript to you. I assume you want it expedited?

18 MR. JULANDER: Yes.

19 MR. TREMBLAY: And you'll transmit a copy to
20 Mr. Robinson's office. You already have his address --
21 and the same kind of copies as before. And declaration
22 under penalty of perjury will placed at the end of the
23 transcript. Mr. Shutov will review and sign it as soon
24 as possible after he receives it. We understand we have
25 a 16th date. And we want to get it reviewed and signed

1 as soon as possible. So I think that's the best way to
2 do it, in the event that it's not signed by the date of
3 the arbitration. And it may be used with the same full
4 force and effect as if signed. Any changes that he makes
5 to the deposition, we'll notify you via letter, fax,
6 e-mail of what those changes are. And any copy will
7 thereafter have the same changes attached to them as if
8 it was an original itself. And you'll maintain the
9 original and lodge it with the arbitrator on the first
10 day of the arbitration.

11 Any other stipulations?

12 MR. JULANDER: No. I think that's satisfactory,
13 with the exception that I --

14 MR. TREMBLAY: Do you want the original to him?

15 MR. JULANDER: No, no. I think it's fine. I
16 think that's how we've dealt with it in the past.

17 MR. TREMBLAY: All right.

18 MR. JULANDER: I just would like -- normally we
19 ask for a specific time frame to get the changes done.

20 MR. TREMBLAY: He's not going to be back till
21 when?

22 THE WITNESS: January 3rd.

23 MR. JULANDER: This isn't going to be
24 transcribed probably until next week, anyway.

25 MR. TREMBLAY: Right. As soon as he gets it,

1 48 hours turnaround?

2 MR. JULANDER: 48 hours is fine.

3 MR. TREMBLAY: That's what we're shooting for.

4 MR. JULANDER: So stipulated.

5 (Deposition concluded at 1:34 p.m.)

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9
10
11 Penalty of Perjury

12
13 I, FYODOR SHUTOV, PH.D., do hereby declare under
14 penalty of perjury that I have read the foregoing
15 transcript; that I have made any corrections as appear
16 noted, in ink, initialed by me, or attached hereto; that
17 my testimony as contained herein, as corrected, is true
18 and correct.

19 EXECUTED this _____ day of _____,
20 2005, at _____,
21 (City) (State)

22
23 _____
24 FYODOR SHUTOV, PH.D.
25 VOLUME 2


1
2
3 I, the undersigned, a Certified Shorthand
4 Reporter of the State of California, do hereby certify:

5 That the foregoing proceedings were taken
6 before me at the time and place herein set forth; that
7 any witnesses in the foregoing proceedings, prior to
8 testifying, were placed under oath; that a verbatim
9 record of the proceedings was made by me using machine
10 shorthand which was thereafter transcribed under my
11 direction; further, that the foregoing is an accurate
12 transcription thereof.

13 I further certify that I am neither
14 financially interested in the action nor a relative or
15 employee of any attorney of any of the parties.

16 IN WITNESS WHEREOF, I have this date
17 subscribed my name.

18
19 Dated: JAN 04 2006

20
21
22 
23 VERONICA VERA
24 CSR NO. 11887
25

Errata Sheet

Pg/Ln

Correction

___/___	Change from: _____ Change to: _____
___/___	Change from: _____ Change to: _____
___/___	Change from: _____ Change to: _____
___/___	Change from: _____ Change to: _____
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___/___	Change from: _____ Change to: _____
___/___	Change from: _____ Change to: _____

Signature: _____ Date: _____

Tab 12

Century Products LLC

July 2, 2004

Mr. Wade Brown
C/O Mr. Dirk O. Julander
Julander, Brown & Boland
Jamboree Center
Two Park Plaza, Suite 450
Irvine, California 92614

Re: Improvements:

Dear Mr. Brown:

In accordance with Section 10.1 of the Amended and Restated Commercial Sublicense Agreement (the "License") between Century-Board USA and Century Products LLC ("Century Products" or "CP"), please be advised that the following material modifications, improvements, or new inventions have been made and are owned and the property of Century Products pursuant to both the terms of the License and the Brown Employment Agreement:

1. New flexible polyol (License Improvement/ or new invention under the License), which was used by Brown post November 24, 2003 and which avoided the mismatch of curing between the two polyols
2. Different ratio (License Improvement/ or new invention under Commercial Sublicense) of the mix of the two polyols used after November 24, 2003 from that which Brown tried.
3. New forming unit invented by CP (new invention by CP) to apply significant pressure to the polyurethane mix as it cures and modify the product physical structure.
4. Fiberglass that is designed to bind to urethane (Brown used fiberglass incompatible with urethanes).
5. Different extruder screw arrangements, barrel arrangements, and ingredient feed to allow for better mixing and filling and reduction of air in the extruder.
6. Operating the extruder at much higher rpm beyond that which Brown could ever accomplish to achieve critical mixing.
7. Changing the way the pigments are introduced into the system so they mixed better with the urethane.
8. Changing the particle sizes of the pigments.
9. Adjusting the content of solid filler to avoid another source of brittleness.
10. Use of new mold release compounds to improve release from the molds and improve surface finish.

1110 E. Kimberly Ave.
Anaheim, CA 92801, USA

Tel: 714-871-5510
Fax: 714-871-5580

EXHIBIT 12
DEPO OF Hydroc. Shutter
DATE 12/15/05
VERONICA VERA, CSR NO. 11887

CB02009
CONFIDENTIAL

12

Century Products LLC

Century Products is not certain that these are License Improvements as that term is defined in the License or whether they should be considered as wholly owned separate intellectual property of Century Products. For that reason, Century Products hereby reserves without prejudice all rights it has under state law and under the License as to whether these items are in fact License Improvements.

If there are any questions about any of this please call at your convenience.

Very truly yours,


John R. Taylor

1110 E. Kimberly Ave.
Anaheim, CA 92801, USA

Tel: 714-871-5510
Fax: 714-871-6580

CB02010
CONFIDENTIAL

Tab 13

Chop fiber strands =
Forming unit start speed =
Start Belt Temp = 145°F

Additives (Surf) =
Additives (Top) =
Additives (V) =
Catalyst 1 =
Catalyst 2 =

P1 =
P2 = 325
P3 =
Color 125
Ash =

Ash Temp
Room Temp
Chiller 8 Barrels

Date: 1/16/04

Mat #

1st Board #:

Line	In	Change	Col. Temp	Extruder				Ash Red	Mn Temp	Cup Cure Time	Min. Jacket & M2 Lock		Meters L/S CHST	Forming Unit			Pne. 1.5 effort	Lumber Look	P20 Pin
				RPM	Temp	Pressure	TI							Set	End	End			
1419		ADD 3% 1042	1042	520	51	105	95	43	27	90			1.23	13.0	19	194			
1420		CAT 1 12.5																	
1425		SHUT DOWN																	
		X STOPPED TOO MUCH VIBRATION																	
		X CONJUGATE 1042-64/142 (1042-19.2-1142)																	
		X STOPPED UP FOR 1000+P																	
1506		START UP		520	52	105	95	43	27	90			1.23	13.0	19	194			
1508		DATA 2 10.5																	
1510		CAT 1 11.0																	
1511		CAT 2 12.5																	
1512		CAT 2 14.5																	
1513		CAT 1 11.0																	
1515		CAT 1 12.0																	
1516		SHUT DOWN																	

21832-5

**CONFIDENTIAL - SUBJECT TO
PROTECTIVE ORDER**

**COMPOSITE MATERIAL INCLUDING RIGID FOAM WITH
INORGANIC FILLERS**

BACKGROUND OF THE INVENTION

[0001] This invention relates generally to composite materials, and more particularly, to composite materials based on rigid polyurethane foams and reinforcing mineral fillers.

[0002] Polyurethane foams are commonly prepared by reacting isocyanate with hydrogen-containing compounds having reactive hydroxyl groups, for example, polyester or polyether polyols. The reaction occurs in the presence of a catalyst, and a blowing agent is provided in order to produce an expanded, cellular product. The blowing agent can be produced chemically by the interaction of the isocyanate with water to generate CO₂ gas. In low density, high expanding systems, a blowing agent such as trichlorofluoromethane is added which vaporizes at the outset of the reaction. Polyurethane foam systems are commonly prepared as two components, the isocyanate component being maintained separate from the polyol-catalyst-blowing agent component until the time of use.

[0003] Structural articles formed from polyurethane foams usually include fillers to increase the strength of the polyurethane foam. U.S. Patent No. 4,661,533 to Stobby describes a rigid polyurethane modified polyisocyanurate foam containing fly ash as a filler that is used for building insulation. However, structural building products, for example synthetic lumber, require higher density foams than those taught by Stobby.

BRIEF DESCRIPTION OF THE INVENTION

[0004] In one aspect, a composite material is provided that includes a polyurethane foam and a plurality of inorganic particles dispersed therein. The polyurethane foam is formed from a reaction mixture that includes a first polyether polyol having a first molecular weight and a functionality of about 3 or less, a second

Tab 14

-1-

EXHIBIT 14
DEPO OF Yoder, Susan
DATE 12/15/05
VERONICA VERA, CSR NO. 11887

14

FROM :Veronica Vera, CSR #11887

FAX NO. :951 734-3071

Jan. 03 2006 03:02PM P5

21832-5

**CONFIDENTIAL - SUBJECT TO
PROTECTIVE ORDER**



FROM : Veronica Vera, CSR #11887

FAX NO. : 951 734-3071

Jan. 03 2006 03:03PM P6

21832-5

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FROM : Veronica Vera, CSR #11887

FAX NO. : 951 734-3071

Jan. 03 2006 03:04PM P7

21832-S

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FROM :Veronica Vera, CSR #11887

FAX NO. :951 734-3071

Jan. 03 2006 03:04PM P8

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FROM : Veronica Vera, CSR #11887

FAX NO. : 951 734-3071

Jan. 03 2006 03:05PM P9

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FROM : Veronica Vera, CSR #11887

FAX NO. : 951 734-3071

Jan. 03 2006 03:06PM P10

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FROM :Veronica Vera, CSR #11887

FAX NO. :951 734-3071

Jan. 03 2006 03:06PM P11

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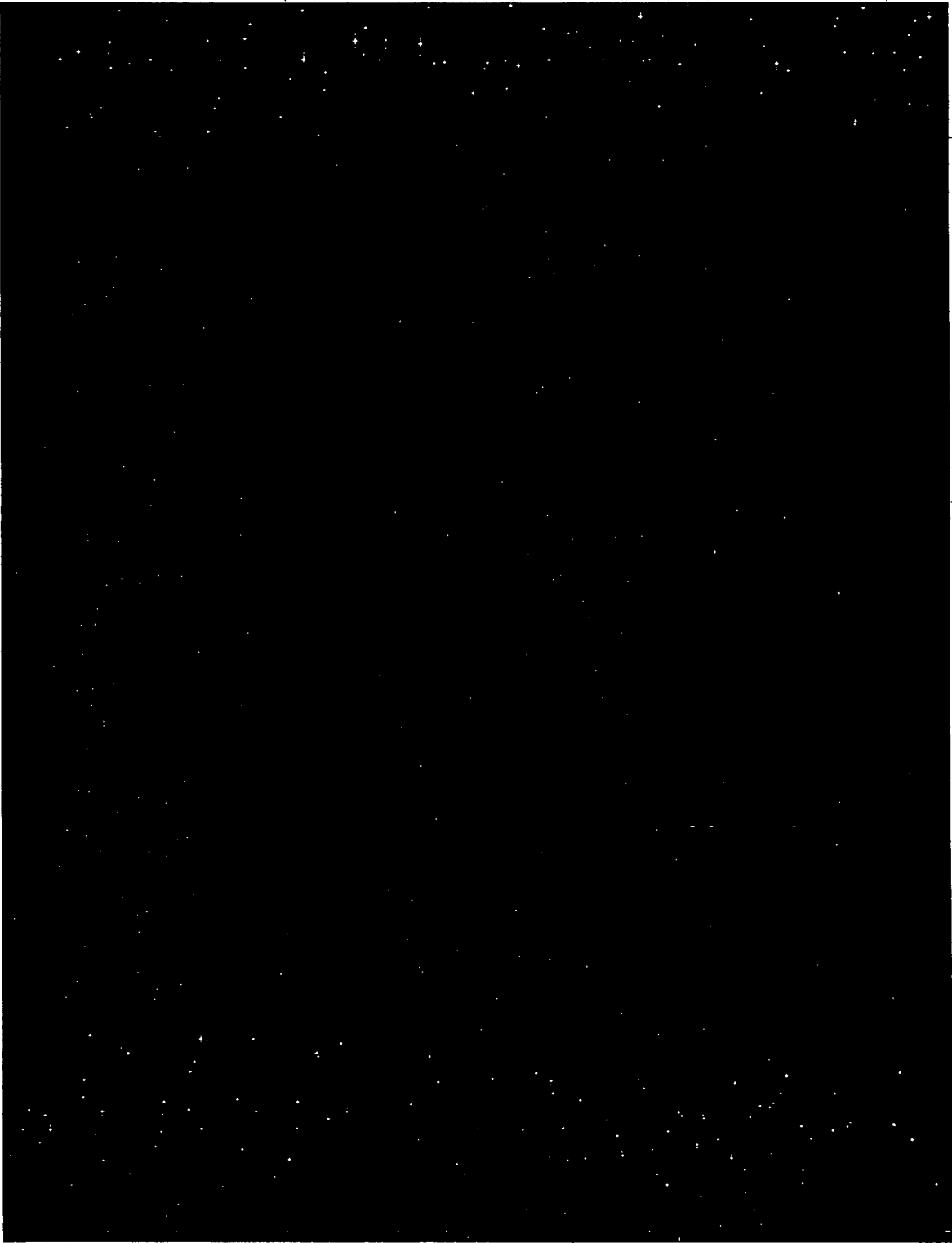
FROM : Veronica Vera, CSR #11887

FAX NO. : 951 734-3071

Jan. 03 2006 03:07PM P12

21832-5

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FROM : Veronica Vera, CSR #11887

FAX NO. : 951 734-3071

Jan. 03 2006 03:07PM P13

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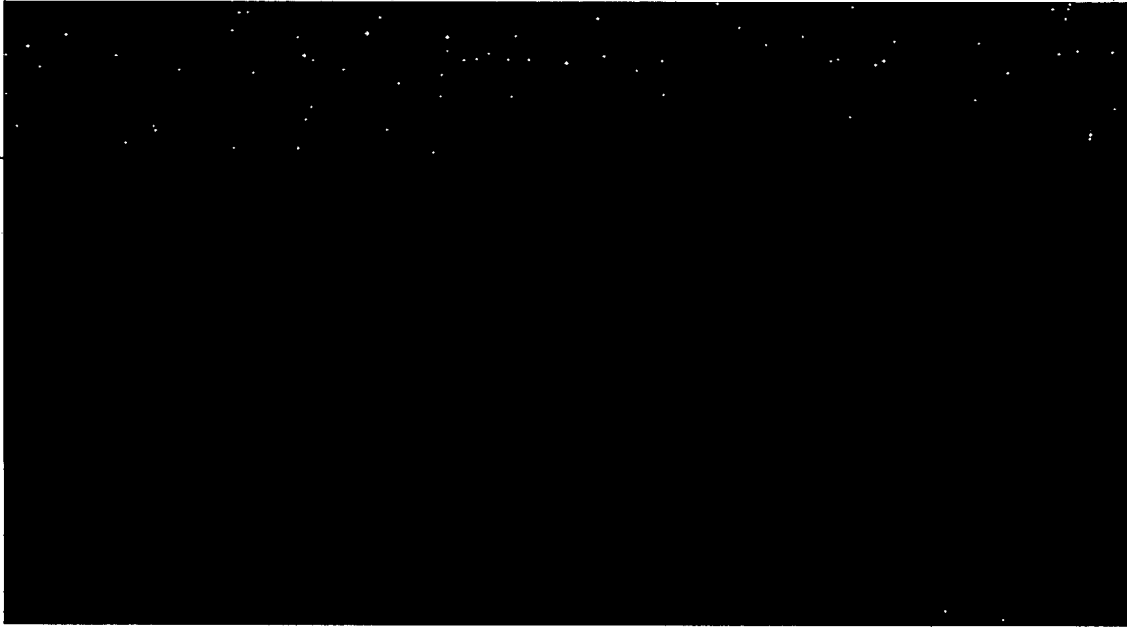
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FAX NO. :951 734-3071

Jan. 03 2006 03:08PM P14

21832-5

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FROM : Veronica Vera, CSR #11887

FAX NO. : 951 734-3071

Jan. 03 2006 03:08PM P15

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PROTECTIVE ORDER



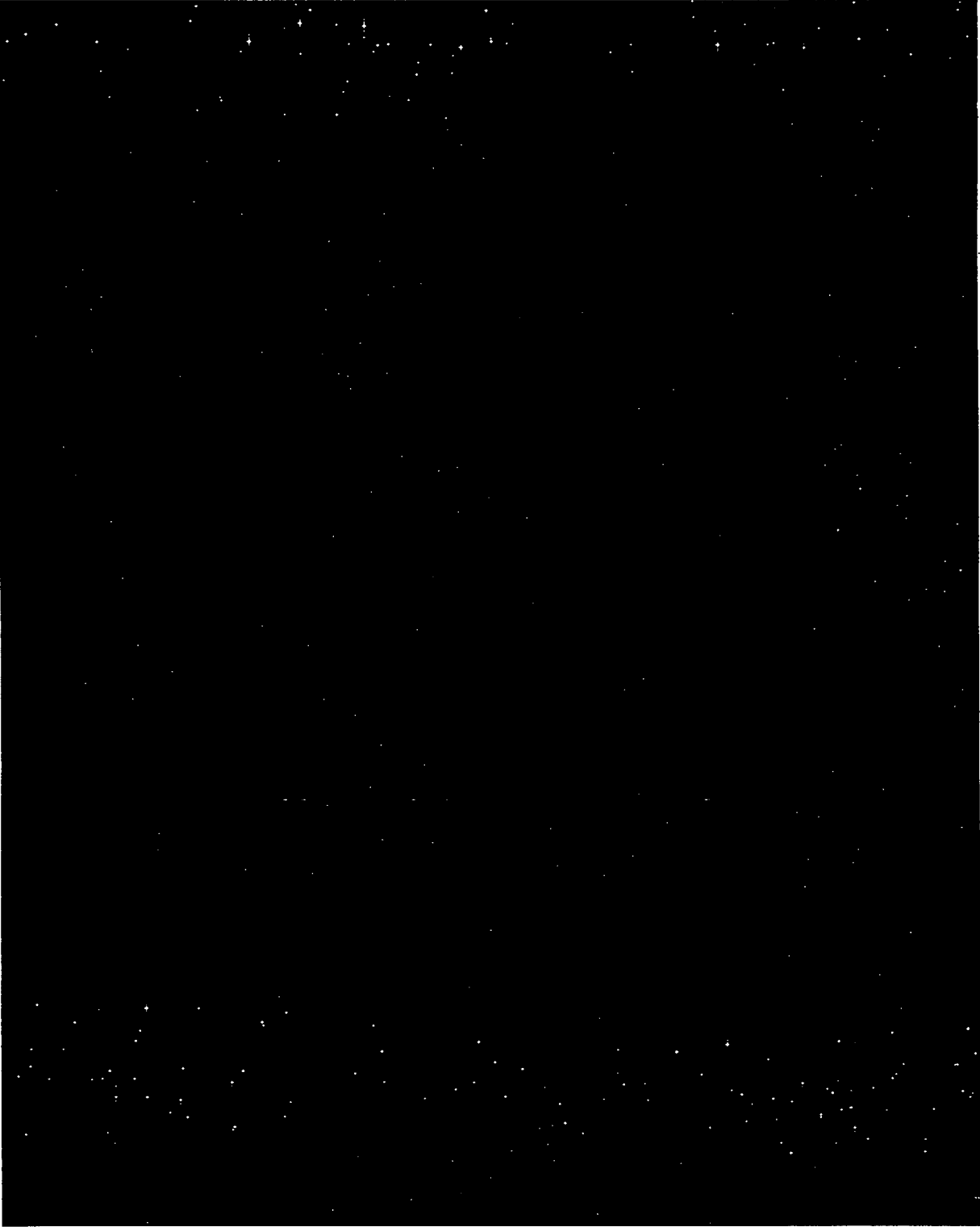
FROM :Veronica Vera, CSR #11887.

FAX NO. :951 734-3071

Jan. 03 2006 03:09PM P16

21832-5

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FROM :Veronica Vera, CSR #11887

FAX NO. :951 734-3071

Jan. 03 2006 03:10PM P17

21832-5

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FROM : Veronica Vera, CSR #11887

FAX NO. : 951 734-3071

Jan. 03 2006 03:10PM P18

21832-5

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PROTECTIVE ORDER



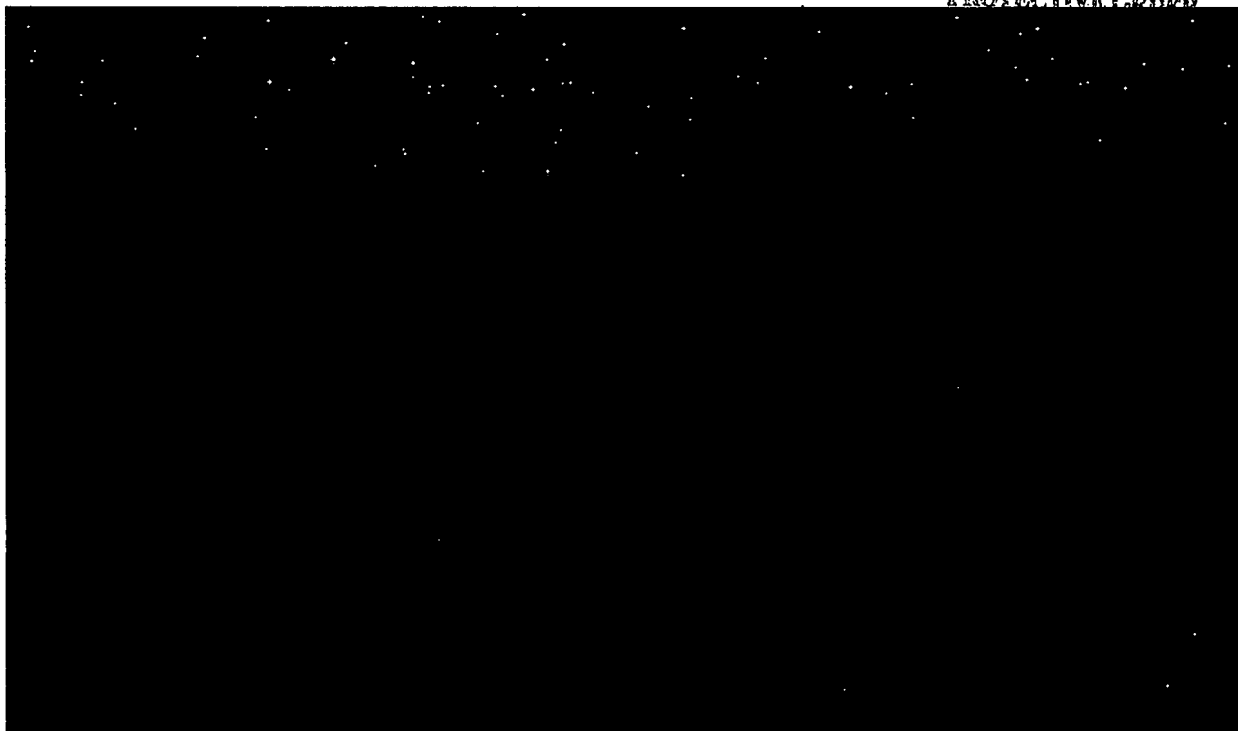
FROM :Veronica Vera, CSR #11887

FAX NO. :951 734-3071

Jan. 03 2006 03:11PM P19

21832-5

CONFIDENTIAL - SUBJECT TO
PROTECTIVE ORDER



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